

CLERK'S COPY.

Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 387

PHELPS DODGE CORPORATION, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

No. 641

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

vs.

PHELPS DODGE CORPORATION

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

PETITIONS FOR CERTIORARI FILED | AUGUST 29, 1941
| DECEMBER 11, 1941

CERTIORARI GRANTED JANUARY 12, 1942

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BOARD'S EXHIBITS

<i>Exhibit No.</i>		<i>Admitted at Page</i>	<i>Printed at Page</i>
1-a	RULES AND REGULATIONS of the National Labor Relations Board, Series 1, as amended, dated April 27, 1938	47	•
1-b	CHARGE sworn to May 25, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	4
1-c	Page 2 of AMENDED CHARGE sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	6
1-d	Page 1 of AMENDED CHARGE sworn to December 18, 1937, and filed with the Board by International Union of Mine, Mill and Smelter Workers, Local No. 30	47	8
1-d(2)	AFFIDAVIT by Rose E. Lombardo, sworn to January 5, 1938, of service of subpoena duces tecum on Mr. H. C. Henrie by registered mail	47	•
1-e	COMPLAINT AND NOTICE OF HEARING issued by the Board, dated January 10, 1938	47	10
	Appendix "A" attached to complaint—list of individuals whom, it is alleged in the complaint, Phelps Dodge Corporation, the respondent Corporation (petitioner herein), has refused to reinstate	47	27
1-f	AFFIDAVIT by Rose E. Lombardo, sworn to January 19, 1938, of service of Board's Exhibit No. 1-g by registered mail on the Copper Queen Branch of the respondent Corporation and on International Union of Mine, Mill and Smelter Workers, Local No. 30	47	•
1-g	ORDER by Towne Nylander, Regional Director of the Board, 21st Region, dated January 19, 1938, extending the respondent Corporation's time to answer	47	•

* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

Board's Exhibits

Exhibit No.		Admitted at Page	Printed at Page
1-h	AFFIDAVIT by Lucile R. Chinnici, sworn to January 11, 1938, of service of complaint, amended charge, notice of hearing and Rules and Regulations by registered mail on International Union of Mine, Mill and Smelter Workers, Local No. 30, on the Copper Queen Branch and the New York office of the respondent Corporation, on the Employees' Association, Phelps Dodge Corporation, Copper Queen Branch, Mines Division, Bisbee, Arizona, and on Denison Kitchel	47	•
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1-i	UNITED STATES POST OFFICE RETURN RECEIPTS re Board's Exhibit No. 1-h	47	•
1-j	ANSWER of the respondent Corporation, verified January 30, 1938	47	28
1-k	MOTION by the respondent Corporation to dismiss the complaint	47	42
1	COPY of ORDER dated January 25, 1938, designating Thomas H. Kennedy as Trial Examiner, and certification by Nathan Witt, Secretary of the Board, dated January 25, 1938, of said copy	51	•
2	COPY of ANALYSIS OF STRIKES in February, 1937, prepared by Division of Industrial Relations of the United States Department of Labor	48	•
3	COPY of various parts of REGISTRATION STATEMENT filed by the respondent Corporation with the Securities and Exchange Commission on May 11, 1937, and various parts of amendment thereto filed on May 25, 1937	51	•
5	STIPULATION between attorney for the Board and attorneys for the respondent Corporation as to facts	53	614

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Board's Exhibits

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6	COPY of ANNUAL REPORT of the respondent Corporation for 1935	82	•
7	COPY of ANNUAL REPORT of the respondent Corporation for 1936	82	•
8	SERVICE RECORD CARD of Tom Abedin	90	621**
10	SERVICE RECORD CARD of William Day	140	621**
11	LIST of names and dates with respect to persons employed or re-employed by the respondent Corporation since June 10, 1935 (offered for identification only, and returned to counsel for the Board)	147	•
12	COPY of BLANK FORM entitled "Phelps Dodge Corporation, Copper Queen Branch, Statement of Time"	152	•
13	SERVICE RECORD CARD of Levie Crenchal	161	622**
14	SERVICE RECORD CARD of Edgar L. Hargus	166	622**
15	SERVICE RECORD CARD of John Henry Key	177	623**
16	SERVICE RECORD CARD of George Edward Frances	200	623**
17	SERVICE RECORD CARD of John Foley	208	624**
18	SERVICE RECORD CARD of Edward J. Bowden, Jr.	214	624**
19	SERVICE RECORD CARD of Paul Amaro	219	625**
20	SERVICE RECORD CARD of Wilford David Mortenson	229	625**
21	SERVICE RECORD CARD of Anson Perry Windsor	237	626**
22	SERVICE RECORD CARD of E. A. Curtis	244	626**
23	SERVICE RECORD CARD of William Dougherty	250	627**
34	LETTER dated February 10, 1934, from M. A. Bateman, Employment Agent of the respondent Corporation, to Mr. Tom Abedin	254	628

* By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, various of the exhibits are not printed, but shall be deemed part of the record before this Court and may be considered by this Court and referred to by the parties.

** By stipulation between the parties dated March 29, 1940, and Order of this Court dated April 1, 1940, the bottom half of the front side, and the entire rear side, of each Service Record Card are not printed.

Board's Exhibits

<i>Exhibit No.</i>		<i>Admitted at Page</i>	<i>Printed at Page</i>
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26	SERVICE RECORD CARD of Joe Dunkerson	273	629**
27	SERVICE RECORD CARD of Vernon Curtis	281	630**
28	SERVICE RECORD CARD of Grover Cornett	287	630**
29	SERVICE RECORD CARD of Martin Vachy	291	631**
30	SERVICE RECORD CARD of Montague L. Reed	299	631**
31	SERVICE RECORD CARD of Clyde Bigelow	305	632**
32	SERVICE RECORD CARD of Milton Lewis Wynn	315	632**
33	SERVICE RECORD CARD of Alek Kalastro	321	633**
34	SERVICE RECORD CARD of William Henry Bigelow	328	633**
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39	SERVICE RECORD CARD of Merrell Ernest Johnson .	359	636**
40	SERVICE RECORD CARD of George Gerhardt	364	636**
41	SERVICE RECORD CARD of William D. Graham	368	637**
42	SERVICE RECORD CARD of William Edward Sharp, Jr.	377	637**
43	SERVICE RECORD CARD of Lester F. Bethel	390	638**
44	SERVICE RECORD CARD of Mike Mihelich	396	638**
45	SERVICE RECORD CARD of Pete D. Caretto	400	639**
46	SERVICE RECORD CARD of Henry Clyde Waters ..	407	639**
47	SERVICE RECORD CARD of Philitties C. Lytle	413	640**
48	SERVICE RECORD CARD of Jesse Edge	421	640**
49	SERVICE RECORD CARD of H. J. Montgomery	426	641**
51	SERVICE RECORD CARD of J. M. Morris	436	641**
52	SERVICE RECORD CARD of Leonard Gness	440	642**

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Board's Exhibits

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53	SERVICE RECORD CARD of Frank Peterson	455	642**
54	SERVICE RECORD CARD of Harvey Dolph Edge ...	466	643**
55	SERVICE RECORD CARD of Ben Harrison Stringer .	473	643**
56	SERVICE RECORD CARD of George C. Rohrer	479	644**
57	Copy of LETTER dated June 10, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates, President of the respondent Corporation	595	645
58	Copy of TELEGRAM dated June 10, 1935, from P. G. Beckett to L. S. Cates, President of the respondent Corporation	597	647
59	Copy of LETTER dated August 6, 1935, from the Vice-President and General Manager of the respondent Corporation to Mr. Louis S. Cates	598	648
60	Copy of LETTER dated August 13, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated August 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein	599	649
61	Copy of LETTER dated August 27, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated August 24, 1935, from H. C. Henrie, Assistant General Superintendent of the respondent Corporation, to Mr. P. G. Beckett enclosed therein	600	656
	✓ Copy of postscript to enclosed letter	600	659
62	Copy of LETTER dated July 14, 1937, from the General Manager of the respondent Corporation, to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated July 17, 1937, from the General Manager to Mr. L. S. Cates	600	660

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Board's Exhibits

<i>Exhibit No.</i>		<i>Admitted at Page</i>	<i>Printed at Page</i>
63	Copy of LETTER dated June 25, 1935, from the Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation	602	662
64	Copy of LETTER dated June 11, 1935, from P. G. Beckett, Vice-President and General Manager of the respondent Corporation, to Mr. Louis S. Cates, President of the respondent Corporation, and copy of LETTER dated June 10, 1935, from H. C. Henrie to Mr. P. G. Beckett enclosed therein.....	602	665
65	Copies of two TELEGRAMS both dated August 25, 1935, one from P. G. Beckett to L. S. Cates, President of the respondent Corporation, and one from J. H. Davis to P. G. Beckett.....	603	669
66	Copy of LETTER dated June 5, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation.....	603	670
67	Copy of LETTER dated June 15, 1937, from the General Manager of the respondent Corporation to Mr. L. S. Cates, President of the respondent Corporation, and copy of LETTER dated June 11, 1937, from H. C. Henrie to Mr. H. M. Lavender, General Manager of the respondent Corporation enclosed therein	604	672

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United States Circuit Court of Appeals
FOR THE SECOND CIRCUIT.

PHELPS DODGE CORPORATION, a corporation,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

**PETITION FOR REVIEW OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD DATED
JANUARY 16, 1940.**

ELLINWOOD & ROSS,
Phoenix, Arizona.

DEBEVOISE, STEVENSON, PLIMPTON & PAGE,
20 Exchange Place,
New York City,

Attorneys for Petitioner.

DENISON KITCHEL,
WM. E. STEVENSON,
Of Counsel.

January 24th, 1940.

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United States Circuit Court of Appeals
FOR THE SECOND CIRCUIT.

PHELPS DODGE CORPORATION,
a corporation,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

No.

PETITION FOR REVIEW OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

Dated January 16, 1940

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

Phelps Dodge Corporation, a corporation, pursuant to Section 10(f) of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. Code, Sections 151-166), respectfully petitions this Court to review and to set aside an order issued by the National Labor Relations Board against petitioner on the 16th day of January, 1940, in a proceeding appearing upon the records of respondent as "IN THE MATTER OF PHELPS DODGE CORPORATION, A CORPORATION, AND INTERNATIONAL UNION OF MINE, MILL AND SMELTER WORKERS, LOCAL No. 30, Case No. C-500."

In support of this petition petitioner makes the following statements to the Court:

(1) Petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of New York and as such is transacting business and has its principal office in the City and County of New York, State of New

York, within this judicial circuit. Respondent's order is, therefore, reviewable by this Court under the provisions of Section 10(f) of the National Labor Relations Act.

(2) On January 10, 1938, a complaint was issued against petitioner by respondent, acting through its Regional Director for the Twenty-first Region (Los Angeles, California), alleging that petitioner had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act in connection with certain mining operations conducted by petitioner at Bisbee, Arizona. Petitioner filed its answer to this complaint on January 20, 1938, denying that it had engaged in or was engaging in the alleged unfair labor practices. A hearing before one of respondent's trial examiners was held in Bisbee, Arizona, from January 27 through February 3, 1938. The Trial Examiner's Intermediate Report was issued on March 16, 1938, and thereafter petitioner filed with respondent its statement of exceptions to the report and a brief in support of that statement. The matter was argued orally by petitioner's attorney before respondent in Washington, D. C., on May 5, 1938, and was reargued on July 20, 1939.

(3) Respondent's order, review of which is sought by this petition, was issued by respondent on January 16, 1940, and a copy thereof was served upon petitioner. The said order, which is preceded by respondent's findings of fact and conclusions of law, purportedly made from the record in the case, reads as follows:

"ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill and Smelter Workers Local No. 30, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since the dates indicated, in the manner set forth in the section entitled "Remedy," above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Vernon Dell Curtis, Grover Cornett, William Daugherty, and Herschel Montgomery.

(b) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclav, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank

Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less the net earnings of each during said period; deducting, however, from the amount otherwise due each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(c) Make whole Henry Waters for any loss of pay he may have suffered by reason of respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, deducting, however, from the amount otherwise due him, monies received by him during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Vernon Dell Curtis and Grover Cornett for any loss of pay they may have suffered by respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to March 16, 1938, and from the date of the service of this Order to the date of offer of reinstatement or placement upon a preferential list, less the net earnings of each during the said periods, deducting, however, from the amount otherwise due to each of said employees, monies received by said employees during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipi-

pal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole William Daugherty for any loss of pay he may have suffered by respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that he would normally have earned as wages from January 15, 1937, to March 16, 1938, and from the date of the service of this Order to the date of reinstatement or placement upon a preferential list, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(f) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that the respondent will cease and desist in the manner set forth in 1(a) and (b); that it will take the affirmative action in 2(a), (b), (c), (d), and (e) of this Order; and that the respondent's employees are free to become or remain members of International Union of Mine, Mill and Smelter Workers Local No. 30, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith."

(4) The foregoing order of respondent is a final order by which petitioner is aggrieved and greatly prejudiced. Petitioner requests that the same be reviewed and set aside by the Court for the following reasons:

(a) The findings of fact upon which the foregoing order is predicated are not supported by substantial evidence in the record.

(b) The conclusions of law upon which the foregoing order is predicated are erroneous and contrary to law.

(c) The order in question is beyond the scope of the authority conferred upon respondent by Section 10 of the National Labor Relations Act and is in derogation of the rights guaranteed to petitioner by the Fifth Amendment to the Constitution of the United States.

(5) Respondent has been fully apprised by petitioner on several occasions by motions to dismiss, briefs, and oral arguments of the grounds upon which petitioner contends that the order in question is invalid and these grounds will be fully restated and presented to the Court in the brief to be filed by petitioner in support of this petition. The only new issue insofar as petitioner and respondent are concerned is raised by that portion of the order in question wherein petitioner is directed to pay over to the appropriate fiscal agencies of the federal, state, county, and municipal governments moneys earned on work-relief projects by the individuals as to whom the payment of back pay is required. Petitioner contends that the provisions of Section 10 of the National Labor Relations Act do not authorize respondent to issue such an order.

WHEREFORE, petitioner prays that this Court require the respondent to certify and file in this Court a transcript of the entire record in the proceeding, including the pleading and testimony upon which the order complained of was entered and the findings and order of respondent, that thereupon this Court review the order of respondent in this case and that after consideration of the record and of the arguments and contentions of the parties hereto a decree be issued setting aside said order in whole or in part as the Court may see fit in the premises.

Respectfully submitted,

ELLINWOOD & ROSS
DENISON KITCHEL
Phoenix, Arizona

DEBEVOISE, STEVENSON, PLIMPTON & PAGE

WM. E. STEVENSON
20 Exchange Place
New York City

Attorneys for Petitioner,
Phelps Dodge Corporation.

Dated January 24th, 1940.

No.—

**In the United States Circuit Court of Appeals
for the Second Circuit**

PHELPS DODGE CORPORATION, A CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

**ON PETITION TO REVIEW AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

**ANSWER OF THE NATIONAL LABOR RELATIONS
BOARD TO PETITION FOR REVIEW OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD
ISSUED JANUARY 16, 1940, AND REQUEST FOR
ENFORCEMENT OF SAID ORDER.**

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**In the United States Circuit Court of Appeals
for the Second Circuit**

No.—

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v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

**ON PETITION TO REVIEW AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

**ANSWER OF THE NATIONAL LABOR RELATIONS
BOARD TO PETITION FOR REVIEW OF AN ORDER
OF THE NATIONAL LABOR RELATIONS BOARD
ISSUED JANUARY 16, 1940, AND REQUEST FOR
ENFORCEMENT OF SAID ORDER**

*To the Honorable, the Judges of the United States Circuit
Court of Appeals for the Second Circuit:*

Comes now the National Labor Relations Board and, pursuant to the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. Sec. 151 *et seq.*), files its answer to the petition to review and set aside an order issued by the Board against Phelps Dodge Corporation, petitioner herein, on January 16, 1940, and the Board's request for enforcement of its said order:

1. The Board admits each and every allegation contained in paragraph (1) of the petition.

2. With respect to the allegations contained in paragraphs (2) and (3) of the petition, the Board, answering, prays reference to the certified transcript of the entire

record in the proceedings before the Board, filed herewith, for a full, exact, and complete statement of all the proceedings had in this case and of the pleadings, testimony, and evidence, findings of fact, conclusions of law, and order of the Board.

3. With respect to the allegations contained in paragraphs (4) and (5) of the petition, the Board, answering, denies each and every allegation of error contained therein. Further answering, the Board avers that the proceedings had before it, findings of fact, conclusions of law, and order were and are in all respects valid and proper under the National Labor Relations Act and the Constitution of the United States.

WHEREFORE, the Board respectfully prays this Honorable Court that said petition to review and set aside said order of the Board be denied.

Further answering, the Board, pursuant to Section 10 (e) and (f) of the National Labor Relations Act, respectfully requests this Honorable Court for the enforcement of the order issued by the Board on January 16, 1940, in the proceedings instituted by it against the petitioner, Phelps Dodge Corporation, said proceedings being designated on the records of the Board as Case No. C-500, the title thereof being "*In the Matter of Phelps Dodge Corporation, a corporation, and International Union of Mine, Mill, and Smelter Workers, Local No. 30.*" In support of this request for the enforcement of its said order, the Board respectfully alleges as follows:

(a) Petitioner is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and has transacted and now transacts business in the State of New York, within this judicial circuit. This Court has jurisdiction of the petition to review herein and of this request for enforcement by virtue of Section 10 (e) and (f) of the National Labor Relations Act.

(b) Upon all proceedings had in said matter before the Board, as more fully shown by the certified transcript of the entire record thereof, filed herewith, to which reference is hereby made, and including, without limitation, complaint, answer, hearing for the purpose of taking testimony and receiving other evidence, Intermediate Report and exceptions

filed thereto, and written and oral argument before the Board, the Board on January 16, 1940, made its decision, duly stated its findings of fact and conclusions of law, and issued the following order directed to petitioner, its officers, agents, successors, and assigns:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Phelps Dodge Corporation, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Discouraging membership in International Union of Mine, Mill, and Smelter Workers, Local No. 30, or any other labor organization of its employees, by discriminating in regard to hire or tenure of employment or any terms or conditions of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to the following persons immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges, dismissing if necessary all employees hired since the dates indicated, in the manner set forth in the section entitled "Remedy," above, and place those for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section: Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom

Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclay, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Meran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, Vernon Dell Curtis, Grover Cornett, William Daugherty, and Herschel Montgomery.

(b) Make whole Edgar Lewis Hargus, John Henry Key, George Edward Frazee, Edward Bowden, Paul Amaro, Wilfred Davis Mortenson, Anson Perry Windsor, Emery Adelbert Curtis, Tom Abedin, Joe Henry Dunkerson, Grover D. Windsor, Martin Vaclay, Montague Reed, Milton Wynn, Alexander Kalastro, William Henry Bigelow, William Windsor, Ellis Moran Scales, Frank Erkkila, Luke Sertich, Merrell Ernest Johnson, George Gerhardt, William Graham, William Edward Sharp, Lester F. Bethel, Michael Mihelich, Pete D. Caretto, P. C. Lytle, Jesse Edge, Frank Peterson, Ben H. Stringer, George C. Rohrer, Clyde Bigelow, J. M. Morris, H. D. Edge, and Herschel Montgomery for any loss of pay they may have suffered by reason of the respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to the date of the offer of reinstatement or placement upon a preferential list, less the net earnings of each during said period; deducting, however, from the amount otherwise due each of said employees, monies received by said employees during said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects.

(c) Make whole Henry Waters for any loss of pay he may have suffered by reason of respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that which he normally would have earned as wages from January 1, 1936, to January 1, 1937, less his net earnings during said period, deducting, however, from the amount otherwise due him, monies received by him dur-

ing said period for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(d) Make whole Vernon Dell Curtis and Grover Cornett for any loss of pay they may have suffered by respondent's discriminatory refusal to reinstate them, by payment to each of them of a sum of money equal to that which each would normally have earned as wages from January 1, 1936, to March 16, 1938, and from the date of the service of this Order to the date of offer of reinstatement or placement upon a preferential list, less the net earnings of each during the said periods, deducting however, from the amount otherwise due to each of said employees, monies received by said employees during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(e) Make whole William Daugherty for any loss of pay he may have suffered by respondent's discriminatory refusal to reinstate him, by payment to him of a sum of money equal to that he would normally have earned as wages from January 15, 1937, to March 16, 1938, and from the date of the service of this Order to the date of reinstatement or placement upon a preferential list, less his net earnings during said periods; deducting, however, from the amount otherwise due him, monies received by him during said periods for work performed upon Federal, State, county, municipal, or other work-relief projects, and pay over the amount, so deducted, to the appropriate fiscal agency of the Federal, State, county, municipal, or other government or governments which supplied the funds for said work-relief projects;

(f) Post immediately in conspicuous places throughout its mines at Bisbee, Arizona, and maintain for a period of at least sixty (60) consecutive days notices stating that the respondent will cease and desist in the manner set forth in 1 (a) and (b); that it will take the affirmative action in 2 (a), (b), (c), (d), and (e) of this Order; and that the

respondent's employees are free to become or remain members of International Union of Mine, Mill and Smelter Workers Local No. 30, and that the respondent will not discriminate against any employee because of membership or activity in that organization;

(g) Notify the Regional Director for the Twenty-first Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint, as amended, be, and it hereby is, dismissed, insofar as it alleges that the respondent discriminated in regard to the hire and tenure of employment of William M. Day, Levi Crandall, Richard Johnson, John Patrick Foley, and Leonard Guess.

(c) Thereafter, on January 16, 1940, the Board's decision and order herein was duly served upon petitioner by sending copies thereof postpaid, bearing Government frank, by registered mail, to its attorneys, Ellinwood & Ross, in Phoenix, Arizona, and Denison Kitchel, in Bronxville, New York, and said decision and order is in full force and effect.

(d) Pursuant to Section 10 (e) and (f) of the National Labor Relations Act, the Board is certifying and filing with this Court herewith a transcript of the entire proceedings before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

WHEREFORE, the Board respectfully prays this Honorable Court that it cause notice of the filing of this answer and request for enforcement and of the filing of the transcript to be served upon petitioner, that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and proceedings set forth in the transcript and upon the order made thereon, set forth in paragraph (b) hereof, a decree denying in whole the petition to set aside the order of the Board and enforcing in full said order of the Board and requiring petitioner, its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By ROBERT B. WATTS,

Associate General Counsel.

Dated at Washington, D. C., this 18th day of March 1940.

DISTRICT OF COLUMBIA, ss:

Robert B. Watts, being first duly sworn, states that he is an Associate General Counsel of the National Labor Relations Board, respondent herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing answer and request for enforcement and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information, and belief.

(s) ROBERTS B. WATTS.

Subscribed and sworn to before me this 18th day of March 1940.

[SEAL]

(s) JOHN E. LAWYER,
Notary Public, District of Columbia.

My Commission expires August 31, 1944.

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IN THE
United States Circuit Court of Appeals
FOR THE SECOND CIRCUIT

PHELPS DODGE CORPORATION,
a corporation,

Petitioner,

v.

No.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

Certificate of the National Labor Relations Board.

The National Labor Relations Board by its Secretary, duly authorized by Section 1 of Article CI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Phelps Dodge Corporation, a corporation and International Union of Mine, Mill and Smelter Workers, Local No. 30," the same being Case No. C-500 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Charge filed by the International Union of Mine, Mill and Smelter Workers, Local No. 30, sworn to May 25, 1937.

Certificate of the National Labor Relations Board.

2. Amended charge filed by the aforesaid union and sworn to December 18, 1937.
3. Complaint and notice of hearing issued by the National Labor Relations Board, dated January 10, 1938.
4. Order dated January 19, 1938, extending time to file answer.
5. Respondent's answer verified January 20, 1938.
6. Respondent's motions to dismiss.
7. Certified copy of order dated January 25, 1938, designating Thomas H. Kennedy Trial Examiner.

Documents listed hereinabove under items 1-7, inclusive, are contained in the exhibits and included under the following item:

8. Stenographic transcript of testimony before Thomas H. Kennedy, Trial Examiner for the National Labor Relations Board, on January 27, 29, 31, and February 1, 2, and 3, 1938, together with all exhibits introduced in evidence.
9. Supplemental stipulation dated February 16, 1938.
10. Respondent's motions to dismiss.
11. Copy of the Intermediate Report of Trial Examiner Kennedy dated March 16, 1938.
12. Copy of respondent's exceptions filed April 2, 1938.
13. Copy of respondent's request for petition to file briefs and oral argument dated April 1, 1938.
14. Copy of notice of hearing for purposes of oral argument issued by the National Labor Relations Board on April 5, 1938.
15. Copy of list of appearances at oral argument held on May 5, 1938.

Certificate of the National Labor Relations Board.

16. Stipulation dated January 11, 1939, together with consent of union dated January 31, 1939, to inclusion of stipulation in record.

17. Copy of letter dated June 16, 1939, advising parties of opportunity of requesting further oral argument.

18. Copy of letter from respondent dated June 23, 1939, requesting further argument.

19. Copy of notice of hearing for purposes of oral argument issued by the National Labor Relations Board on June 29, 1939.

20. Copy of respondent's telegraphic request dated June 29, 1939, requesting postponement of argument.

21. Copy of notice of postponement of oral argument dated June 30, 1939, together with copy of telegraphic notice of same.

22. Copy of list of appearances at oral argument before the National Labor Relations Board on July 20, 1939.

23. Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board on January 16, 1940, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this 18th day of March 1940.

NATHAN WITT

NATHAN WITT, Secretary

NATIONAL LABOR RELATIONS BOARD

(SEAL)

Board's Exhibit No. 1-b.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

XXI REGION

**IN THE MATTER OF
PHELPS-DODGE CORPORATION**

and

**INTERNATIONAL UNION OF MINE, MILL
AND SMELTER WORKERS, LOCAL 30.**

**XXI-C-266
6 inv.**

Charge

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Phelps-Dodge Corporation, Copper Queen Branch, Bisbee, Arizona, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that

Said company officials have by word and action discouraged employees to join a labor organization of their own choosing.

Said company officials have interfered with the formation of a labor organization; accepted office in a company union and allowed supervisory personnel to solicit support for such a company union while working on company time.

Said company officials have discriminated in regard to hire of employees by definitely refusing employment, solely for union membership, to the following persons: H. J. Montgomery; John Bowden; P. C. Lytle; William Dougherty; Merrill Johnson; and John James McKelvey

Board's Exhibit No. 1-b.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

**INTERNATIONAL UNION OF MINE, MILL AND
SMELTER WORKERS, LOCAL NO. 30**

JOHN P. FOLEY

JOHN P. FOLEY

President

Box 3336, Lowell, Arizona

Subscribed and sworn to before me
this 25th day of May 1937 at Bisbee, Ariz.

ANDERS LARSEN

ANDERS LARSEN

Field Examiner.

Board's Exhibit No. 1-c.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

XXIst REGION

IN THE MATTER OF
PHELPS DODGE CORP.
and

**INTERNATIONAL UNION OF MINE, MILL
 & SMELTER WORKERS, LOCAL No. 30**

Case
No. XXI C 266

Date filed
1937

Amended Charge

Pursuant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Phelps-Dodge Corporation, Copper Queen Branch, Bisbee, Ariz., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) & (3) of said Act, in that (continued from page 1)

solely because they joined and assisted the union and engaged in concerted activities for their mutual aid and protection; and

In that the company at all times since July 5, 1935, has dominated and interfered with the formation and administration of a labor organization known as The Employees' Association, Phelps Dodge Corporation, Copper Queen Branch, Mines Division, and has contributed financial and other support to it by permitting officials and foremen of the company to hold office in the Association, by soliciting membership in the Association on company property and

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Board's Exhibit No. 1-c.

time, by controlling and dominating meetings of the Association and of its Representatives, and by other acts and in other manners.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

**INTERNATIONAL UNION OF MINE, MILL &
SMELTER WORKERS, LOCAL No. 30**

by: **JOHN P. FOLEY**

Subscribed and sworn to before me
this 18th day of December, 1937

DAVID PERSINGER

Atty. N. L. R. B.

Board's Exhibit No. 1-d.**UNITED STATES OF AMERICA****BEFORE THE****NATIONAL LABOR RELATIONS BOARD****XXIst REGION**

IN THE MATTER OF
PHELPS DODGE CORP.

and

INTERNATIONAL UNION OF MINE, MILL
and SMELTER WORKERS, LOCAL No. 30.

CASE NO.
XXI-C-266

Date filed , 1937

Amended Charge

Pursant to Section 10(b) of the National Labor Relations Act, the undersigned hereby charges that Phelps-Dodge Corporation, Copper Queen Branch, Bisbee, Ariz., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that the company on or about July 5, 1935, and at all times thereafter, refused to reinstate, following a strike,

Tom Abedin
 Paul Amaro
 Bert Bethel
 Lester F. Bethel
 Clyde Bigelow
 W. H. Bigelow
 Edward J. Bowden Jr.

Edgar L. Hargus
 Merrell Johnson
 Richard Johnson
 Alek Kalastro
 John H. Key
 P. C. "Dave" Little
 Mike Mihelich

Board's Exhibit No. 1-d.

Pete D. Caretto	H. J. Montgomery
Grover Cornett	J. M. Morris
Levi Crandall	W. D. Mortenson McKelvey
E. A. Curtis	Frank Peterson
T. N. Curtis	Monte Reed
Vernon Curtis	George Rohrer
William Daugherty	E. M. Scales
W. M. Day	Luke Sertich
Joe Dunkerson	William E. Sharpe
Jesse Edge	Ben H. Stringer
H. D. Edge	Martin Vaclav
Frank Erkkila	Henry Waters
John Foley	A. P. Windsor
George Gerhardt	Grover Windsor
William Graham	William Windsor
Leonard Guess	Milton Wynn

George Frazee

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

INTERNATIONAL UNION OF MINE, MILL, &
SMELTER WORKERS, LOCAL No. 30

by: JOHN P. FOLEY
Box 3336, Lowell, Ariz.

Subscribed and sworn to before me }
this 18th day of December, 1937. }

DAVID PRESSINGER

Atty., N. L. E. B.

Board's Exhibit No. 1-a.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and

INTERNATIONAL UNION OF MINE, MILL,
and SMELTER WORKERS, LOCAL No. 30.

CASE No.
XXI-C-266

Complaint.

It having been charged by the International Union of Mine, Mill, and Smelter Workers, Local No. 30, that Phelps Dodge Corporation, 40 Wall Street, New York, New York, hereinafter referred to as respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, 49 Stat. 449, the National Labor Relations Board, by the Regional Director for the Twenty-first Region, as agent of the National Labor Relations Board, designated by National Labor Relations Board Rules and Regulations—Series 1, as amended, hereby alleges the following:

1. Respondent is now and at all times herein mentioned has been a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of New York, County of Kings, State of New York. Respondent is

Board's Exhibit No. 1-c.

now and at all times herein mentioned has been engaged at its mines in or near the City of Bisbee, County of Cochise, State of Arizona, hereinafter referred to as the Copper Queen Mine, in the mining and production of gold, silver, copper, and other ores, and at its plant in or near the City of Douglas, County of Cochise, State of Arizona, hereinafter referred to as the Douglas plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

2. Respondent, in the course and conduct of its business, as described in paragraph one hereof, causes and has continuously caused large quantities of various custom ores to be purchased and transported in foreign commerce from the Republic of Mexico to its said Douglas plant in the United States and in interstate commerce from and through states of the United States other than the State of Arizona to its Douglas plant in the State of Arizona.

3. Respondent, in the course and conduct of its business, as described in paragraphs one and two, hereof, causes and has continuously caused large quantities of the gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Douglas plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California, to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of the gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs one and two, hereof, to be sold and transported in interstate and foreign commerce from its Douglas plant in the State of Arizona to, into, and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

Board's Exhibit No. 1-e.

4. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town of Jerome, County of Yavapai, State of Arizona, hereinafter referred to as the United Verde Mine, in the mining and production of gold, silver, copper, and other ores, and at its plant in or near the town of Clarkdale, County of Yavapai, State of Arizona, hereinafter referred to as the Clarkdale plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

5. Respondent, in the course and conduct of its business, as described in paragraph four, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate commerce from states of the United States other than the State of Arizona, to its Clarkdale plant in the State of Arizona.

6. Respondent, in the course and conduct of its business as described in paragraphs four and five hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Clarkdale plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California, to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ore, as described in paragraphs four and five hereof, to be sold and transported in interstate and foreign commerce from its Clarkdale plant in the State of Arizona to, into, and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

7. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town

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of Ajo, County of Pima, State of Arizona, hereinafter referred to as the New Cornelia Mine, in the mining and production of gold, silver, copper, and other ores, and at its plants in or near the town of Ajo, County of Pima, State of Arizona, hereinafter referred to as the Ajo plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

8. Respondent, in the course and conduct of its business, as described in paragraph seven, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate commerce from states of the United States other than the State of Arizona, to its Ajo plant in the State of Arizona.

9. Respondent, in the course and conduct of its business, as described in paragraphs seven and eight, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Ajo plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs seven and eight, hereof, to be sold and transported in interstate and foreign commerce from its Ajo plant in the State of Arizona to, into, and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

10. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town of

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Morenci, County of Graham, State of Arizona, hereinafter referred to as the Morenci Mine, in the mining and production of gold, silver, copper, and other ores and at its plants in or near the town of Morenci, aforesaid, hereinafter referred to as the Morenci plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

11. Respondent, in the course and conduct of its business, as described in paragraph ten, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate and foreign commerce from the Republic of Mexico and from states of the United States other than the State of Arizona to its Morenci plant in the State of Arizona.

12. Respondent, in the course and conduct of its business, as described in paragraphs ten and eleven, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Morenci plant in the State of Arizona, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs ten and eleven, hereof, to be sold and transported in interstate and foreign commerce from its Morenci plant in the State of Arizona to, into and through states of the United States other than the State of Arizona, territories of the United States, and foreign countries.

13. Respondent is now and at all times hereinafter mentioned has been engaged at its mines in or near the town of Tyrone, in the State of New Mexico, hereinafter referred to

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as the Burro Mountain Mine, in the mining and production of gold, silver, copper, and other ores, and at its plants in or near the aforesaid town of Tyrone, hereinafter referred to as the Tyrone plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

14. Respondent, in the course and conduct of its business, as described in paragraph thirteen, hereof, causes and has continuously caused large quantities of various custom ores to be transported in foreign commerce from the Republic of Mexico and in interstate commerce from states of the United States other than the State of New Mexico, to its Tyrone plant in the State of New Mexico.

15. Respondent, in the course and conduct of its business, as described in paragraphs thirteen and fourteen, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Tyrone plant in the State of New Mexico, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores as set forth in paragraphs thirteen and fourteen, hereof, to be sold and transported in interstate and foreign commerce from its Tyrone plant in the State of New Mexico to, into, and through states of the United States other than the State of New Mexico, territories of the United States, and foreign countries.

16. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Dawson Fuel Mines Company, a wholly owned subsidiary, at its mines in

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or near the City of Dawson in the State of New Mexico, hereinafter referred to as the Dawson Mine, in the mining and production of gold, silver, copper, and other ores and at its plants in or near the City of Dawson in the State of New Mexico, hereinafter referred to as the Dawson plant, in the concentrating, smelting, and refining of the aforesaid and other ores.

17. Respondent, in the course and conduct of its business, as described in paragraph sixteen, hereof, causes and has continuously caused, large quantities of various custom ores to be transported in interstate and foreign commerce from the Republic of Mexico and from states of the United States other than the State of New Mexico to its Dawson plant in the State of New Mexico.

18. Respondent, in the course and conduct of its business, as described in paragraphs sixteen and seventeen, hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its Dawson plant in the State of New Mexico, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and, through the medium of the Dawson Fuel Mines Sales Company, a wholly owned subsidiary, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores, as described in paragraphs sixteen and seventeen, hereof, to be sold and transported in interstate and foreign commerce from its Dawson plant in the State of New Mexico to, into, and through states of the United States other than the State of New Mexico, territories of the United States, and foreign countries.

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19. Respondent is now and at all times herein mentioned has been engaged at its Stag Canon Mine in or near the City of Dawson, County of Colfax, State of New Mexico, in the mining and production of coal.

20. Respondent, in the course and conduct of its business, as described in paragraph nineteen, hereof, causes and has continuously caused large quantities of the coal produced at its Stag Canon Mine to be transported in interstate commerce from said Stag Canon Mine in the State of New Mexico to its various plants, described in paragraphs one to twelve, supra, in the State of Arizona, and causes and has continuously caused large quantities of the coal produced at its said Stag Canon Mine to be sold and transported in interstate commerce from its Stag Canon Mine in the State of New Mexico to, into, and through states of the United States other than the State of New Mexico.

21. Respondent, in the course and conduct of its business, as described in paragraphs one to twenty, both inclusive, hereof, causes and has continuously caused large quantities of natural and artificial gas to be purchased and transported in interstate commerce from the States of Texas and Oklahoma to its aforesaid mines and plants, described in paragraphs one to twenty, both inclusive, hereof, in the States of Arizona and New Mexico and causes and has continuously caused large quantities of coal, oil, and other fuels to be purchased and transported in interstate commerce from states of the United States other than the States of Arizona and New Mexico to its aforesaid mines and plants, described in paragraphs one to twenty, both inclusive, hereof, in the States of Arizona and New Mexico, and causes and has continuously caused large quantities of raw materials used in the concentrating, smelting, and refining operations of its aforesaid plants, described in paragraphs one to eighteen, inclusive, hereof, to be purchased and transported in interstate commerce from states

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of the United States other than the States of Arizona and New Mexico to its said plants in the States of Arizona and New Mexico.

22. Respondent is now and at all times hereinafter mentioned has been engaged, through the medium of the Nichols Copper Company, a subsidiary, at its plants in or near the City of El Paso in the State of Texas, hereinafter referred to as the El Paso plant, in the concentrating, smelting, and refining of gold, silver, copper, and other ores.

23. Respondent, in the course and conduct of its business, as described in paragraph 22, hereof, causes and has continuously caused large quantities of various custom ores to be transported in interstate and foreign commerce from states of the United States other than the State of Texas and from the Republic of Mexico to its El Paso plant in the State of Texas.

24. Respondent, in the course and conduct of its business, as described in paragraphs 22 and 23 hereof, causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be transported in interstate commerce from its El Paso plant in the State of Texas, through states of the United States other than the States of New York, New Jersey, Connecticut, Indiana, and California to its various plants in the States of New York, New Jersey, Connecticut, Indiana, and California, hereinafter described in paragraphs 25 to 30, inclusive, hereof, and causes and has continuously caused large quantities of gold, silver, copper, and other metallic and non-metallic products extracted from the aforesaid ores to be sold and transported in interstate and foreign commerce from its El Paso plant in the State of Texas to, into, and through states of the United States other than the State of Texas, territories of the United States, and foreign countries.

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25. Respondent is now and at all times hereinafter mentioned has been engaged, through the medium of the Nichols Copper Company, a subsidiary, at its plants in or near the Town of Laurel Hill on Long Island in the State of New York, hereinafter referred to as the Long Island plant, in the manufacture, sale, and distribution of electrolytic copper, sulphate of copper, and other copper and copper alloy products.

26. Respondent, in the course and conduct of its business, as described in paragraph 25, hereof, causes and has continuously caused large quantities of the copper and other metallic and non-metallic substances produced by it at its aforesaid plants, described in paragraphs one to eighteen, and 22 to 24, inclusive, hereof, to be transported in interstate commerce from its said plants in the States of Arizona, New Mexico, and Texas through states of the United States other than the State of New York to its Long Island plant in the State of New York, hereinabove described in paragraphs one to eighteen and 22 to 24, inclusive, and causes and has continuously caused large quantities of copper and other metallic and non-metallic substances used in the manufacture of its products as described in paragraph 25, hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the State of New York to its Long Island plant in the State of New York, and causes and has continuously caused large quantities of the electrolytic copper, sulphate of copper, and other copper and copper alloy products manufactured by it to be sold and transported in interstate and foreign commerce from its Long Island plant in the State of New York to, into, and through States of the United States other than the State of New York, territories of the United States, and foreign countries.

27. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Phelps Dodge

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Copper Products Corporation, a subsidiary, at its plants in the Cities of Elizabeth and Bayway in the State of New Jersey, in the City of Fort Wayne in the State of Indiana, and in the City of Los Angeles in the State of California in the manufacture, sale, and distribution of copper rods, bare and tinned copper wires, stranded cables, trolley and contact wire, copper bus bars, commutator strip, weather-proof wires, magnet wires, bronze and brass wires, condenser tubes, brass, bronze, and copper pipes, copper service pipes, copper bus tubes, heater, cooler, and air-conditioning tubes, enameled copper wires, cotton or silk covered wires, paper insulated wires, coil and radio power transformers, copper and copper alloys having high physical properties, and other copper and copper alloy products.

28. Respondent, in the course and conduct of its business, as described in paragraph 27, hereof, causes and has continuously caused large quantities of copper and other products of its plants, described in paragraphs one to eighteen and 22 to 24, inclusive, hereof, to be transported in interstate commerce from its said plants in the States of Arizona, New Mexico, and Texas through states of the United States other than the States of New Jersey, Indiana, and California to its said plants in the States of New Jersey, Indiana, and California, as hereinabove described in paragraphs one to eighteen and 22 to 24, inclusive, hereof, and causes and has continuously caused large quantities of copper and other metallic and non-metallic substances used in the manufacture of its products, as described in paragraph 27, hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the States of New Jersey, Indiana, and California and to its aforesaid plants in the States of New Jersey, Indiana, and California, and causes and has continuously caused large quantities of the various copper and copper alloy products manufactured by it, as described in

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paragraph 27, hereof, to be sold and transported in interstate and foreign commerce from its said plants in the States of New Jersey, Indiana, and California to, into, and through states of the United States other than the States of New Jersey, Indiana, and California, territories of the United States, and foreign countries.

29. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Habirshaw Cable and Wire Corporation, a subsidiary, at its plants in the Cities of Yonkers and Nepperhan in the State of New York, and the City of Bridgeport in the State of Connecticut in the manufacture, sale, and distribution of rubber insulated wires, paper insulated power cables, coils, transformers, special copper alloys, and other copper and copper alloy products.

30. Respondent, in the course and conduct of its business, as described in paragraph 29, hereof, causes and has continuously caused large quantities of the copper and other substances produced at its aforesaid plants, described in paragraphs one to eighteen and 22 to 24, inclusive, hereof, to be transported in interstate commerce from the aforesaid plants in the States of Arizona, New Mexico, and Texas, through states of the United States other than the States of New York and Connecticut to its aforesaid plants in the States of New York and Connecticut, as hereinabove set forth in paragraphs one to eighteen and 22 to 24, inclusive, hereof, and causes and has continuously caused large quantities of copper and other metallic and non-metallic substances used in the manufacture of its products, as described in paragraph 29 hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the States of New York and Connecticut to its said plants in the States of New York and Connecticut, and causes and has continuously caused large quantities of its products, described in paragraph 29, hereof,

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to be sold and transported in interstate and foreign commerce from its said plants in the States of New York and Connecticut to, into, and through states of the United States other than the States of New York and Connecticut, territories of the United States, and foreign countries.

31. Respondent is now and at all times herein mentioned has been engaged, through the medium of the Phelps Dodge Mercantile Company, a subsidiary, at its stores in the Town of Ajo, the City of Bisbee, and the City of Douglas, all in the State of Arizona, and in the City of Dawson in the State of New Mexico, and in the Town of Nacozari, Province of Sonora, Republic of Mexico, in the wholesale and retail distribution of general merchandise.

32. Respondent, in the course and conduct of its business, as described in paragraph 31, hereof, causes and has continuously caused large quantities of the merchandise sold by it to be purchased and transported in interstate commerce from and through states of the United States other than the States of Arizona and New Mexico, to its aforesaid stores in the States of Arizona and New Mexico and in foreign commerce from the United States to its aforesaid store in the Republic of Mexico and from the Republic of Mexico to its aforesaid stores in the States of Arizona and New Mexico.

33. Respondent is now and at all times herein mentioned has been engaged at other mines, plants, and stores and, through subsidiaries, at still other mines, plants, stores, and various public utility properties, within and without the United States, in the mining, smelting, and refining of gold, silver, copper, and other ores and custom ores and in the manufacture, production, sale, and distribution of copper and copper alloy products, gas, water, and electric power, and gas, water, and general merchandise.

34. Respondent, in the course and conduct of its business, as described in paragraph 33, hereof, causes and has

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continuously caused large quantities of the aforesaid ores and gold, silver, copper, and other metallic and non-metallic products extracted from said ores to be transported in interstate commerce from and through states of the United States other than the states within which the aforesaid plants are located to its said plants, and causes and has continuously caused large quantities of the raw materials used in the manufacture and production of the products described in paragraph 33, hereof, to be purchased and transported in interstate commerce from and through states of the United States other than the states within which the said plants and other properties are located to said plants and other properties, and causes and has continuously caused large quantities of the products manufactured and produced by it, as described in paragraph 33, hereof, to be sold and transported in interstate and foreign commerce from the said plants and other properties to, into, and through states of the United States other than the states in which said plants and other properties are located, territories of the United States, and foreign countries, and causes and has continuously caused large quantities of the general merchandise sold by it to be purchased and transported in interstate commerce from and through states of the United States other than the states within which the said stores are located to the said stores.

35. The International Union of Mine, Mill, and Smelter Workers, Local No. 30, hereinafter called the union, is a labor organization within the meaning of Section 2, subdivision (5) of the Act.

36. Respondent, by its officers and agents, while engaged in the Copper Queen Mine, as described in paragraphs one to three, inclusive, hereof, following a strike called June 10, 1935, which strike was in full force and effect on July 5, 1935, did on or about July 5, 1935 refuse and at all times thereafter has refused and now does refuse to reinstate

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those individuals whose names appear in Appendix "A" attached hereto and herewith incorporated into and made a part of this complaint, hereinafter referred to as those individuals named in Appendix "A", and each of them, employed, prior to the said strike, in the Copper Queen Mine.

37. Respondent refused and has refused and now does refuse to reinstate the said individuals named in Appendix "A", and each of them, as set forth in paragraph 36, hereof, for the reason that the said individuals named in Appendix "A", and each of them, joined and assisted the union and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection.

38. By its refusal to reinstate said individuals named in Appendix "A", and each of them, as set forth in paragraphs 36 and 37, hereof, respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the said individuals named in Appendix "A", and each of them, and did thus discourage and is thus discouraging membership in the union, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

39. By its refusal to reinstate the said individuals named in Appendix "A", and each of them, as set forth in paragraphs 36 and 37, hereof, respondent did interfere with, restrain, and coerce and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all said acts, and each of them, did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

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40. The activities of respondent, as set forth in paragraphs 36 to 39, both inclusive, hereof, occurring in connection with the operations of respondent, described in paragraphs one to thirty-four, both inclusive, hereof, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, territories of the United States, and foreign countries and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

41. The aforesaid acts of respondent, as set forth in paragraphs 36 to 39, both inclusive, hereof, occurring in connection with the operations of respondent, described in paragraphs one to thirty-four, both inclusive, hereof, constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act.

WHEREFORE, the National Labor Relations Board, on this 10th day of January, 1938, issues its complaint against Phelps Dodge Corporation, respondent herein.

NOTICE OF HEARING.

PLEASE TAKE NOTICE THAT on the 27th day of January, 1938, in the Superior Courtroom, Bisbee, Arizona, at 9:30 o'clock in the forenoon, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 1, as amended, Article IV and Article II, Section 23, on the allegations set forth in the complaint hereinabove set forth, at which time and place you have the right to appear in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Twenty-first (21st) Region, acting in this matter as the agent of the National

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Labor Relations Board, an answer to the foregoing complaint, on or before the 19th day of January, 1938.

Enclosed herewith for your information is a copy of the Rules and Regulations, made and published by the National Labor Relations Board, pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF, the National Labor Relations Board has caused this, its complaint and its notice of hearing, to be signed by the Regional Director for the Twenty-first (21st) Region on the 10th day of January, 1938.

TOWNE NYLANDER

TOWNE NYLANDER

Regional Director, 21st Region
National Labor Relations Board
745 Pacific Electric Bldg.
Los Angeles, California

(SEAL)

Appendix "A".

Tom Abedin	Merrell Johnson
Paul Amaro	Richard Johnson
Bert Bethel	Alek Kalastro
Lester F. Bethel	John H. Key
Clyde Bigelow	P. C. Lytle
W. H. Bigelow	Mike Mikelich
Edward J. Bowden, Jr.	H. J. Montgomery
Pete D. Caretto	J. M. Morris
Grover Connett	W. D. Mortenson McKelvey
Levi Crandall	Frank Peterson
E. A. Curtis	Monte Reed
T. N. Curtis	George Rohrer
Vernon Curtis	E. M. Scales
William Daugherty	Luke Sertich
W. M. Day	William E. Sharpe
Joe Dunkerson	Ben H. Stringer
Jesse Edge	Martin Vaclav
H. D. Edge	Henry Waters
Frank Erkkila	A. P. Windsor
John Foley	Grover Windsor
George Gerhardt	William Windsor
William Graham	Milton Wynn
Leonard Guess	George Frazee
Edgar L. Hargus	Earl Worden

Board's Exhibit No. 1-j.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and
INTERNATIONAL UNION OF MINE, MILL,
AND SMELTER WORKERS, LOCAL No. 30

CASE No.
XXI-C-266

Answer.

Comes now the respondent, Phelps Dodge Corporation, and in answer to the complaint in the above entitled matter admits, denies, and alleges as follows:

I.

In answer to Paragraph 1 of the complaint, respondent admits that it is now and at all times therein mentioned has been a corporation organized under and existing by virtue of the laws of the State of New York, having its principal office and place of business in the City of New York, County of New York, State of New York. Respondent further admits that it is now and at all times therein mentioned has been engaged in its mines in or near the City of Bisbee, County of Cochise, State of Arizona, in the mining and production of gold, silver, copper and other

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ores. Respondent alleges that the aforesaid mining operations constitute the Mines Division of the Copper Queen Branch of respondent and that all of the ores produced at respondent's said Copper Queen Branch, Mines Division, are shipped in intrastate commerce a distance of approximately twenty-five miles to respondent's smelter located near the City of Douglas, County of Cochise, State of Arizona, save and except a small quantity of lead ore which has been shipped in interstate commerce from respondent's Copper Queen Branch, Mines Division, to the refinery of the Nichols Copper Company located in the City of El Paso, State of Texas. Respondent further alleges that it is engaged in the smelting of the aforesaid and other ores at said smelter and that such smelting operations constitute the Smelter Division of the Copper Queen Branch of the respondent. Respondent further alleges that the ores received from the Copper Queen Branch, Mines Division, at the smelter of the Copper Queen Branch, Smelter Division, as aforesaid, are smelted and converted into copper bullion. Respondent denies that it is engaged in the concentrating and refining of the aforesaid or any other ores at the smelter of its Copper Queen Branch, Smelter Division.

II.

In answer to Paragraph 2 of the complaint, respondent admits that in the course and conduct of the smelter operations conducted at its Copper Queen Branch, Smelter Division, as described in Paragraph I hereof, it causes and has continuously caused quantities of various custom ores to be purchased and transported in foreign commerce from the Republic of Mexico to its smelter located near the City of Douglas in the State of Arizona. Respondent denies, however, that large quantities of such custom ores were so purchased and transported, and in this respect re-

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respondent alleges that such custom ores constitute a relatively small percentage of the total ores smelted at its Copper Queen Branch, Smelter Division. Respondent admits that it causes and has continuously caused quantities of various custom ores to be purchased and transported in interstate commerce from and through states of the United States other than the State of Arizona to its smelter located near the City of Douglas in the State of Arizona. Respondent denies, however, that large quantities of such custom ores were so purchased and transported, and in this respect respondent alleges that such custom ores constitute a relatively small percentage of the total ores smelted at its Copper Queen Branch, Smelter Division.

III.

Respondent denies all and singular the allegations set forth and contained in Paragraph 3 of the complaint, and in this respect respondent alleges that all of the copper bullion, containing gold, silver, copper and other metals produced at its Copper Queen Branch, Smelter Division, is shipped from the City of Douglas, State of Arizona, to the refinery of the Nichols Copper Company, located in the City of El Paso, State of Texas.

IV.

In answer to the allegations of Paragraph 4 of the complaint, respondent admits that it is now and at all times thereafter mentioned has been engaged at its mine in or near the Town of Jerome, County of Yavapai, State of Arizona, in the mining and production of gold, silver, copper and other ores. Respondent alleges that the afore-said mining operations constitute the Mine Division of the United Verde Branch of respondent and that the ores produced at its United Verde Branch, Mine Division, are

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shipped in intrastate commerce a distance of approximately ten miles to its smelter located in the Town of Clarkdale, County of Yavapai, State of Arizona, where the same are concentrated, smelted and converted into copper bullion. Respondent further alleges that it is engaged in the smelting of the aforesaid and other ores at said smelter and that such smelting operations constitute the Smelter Division of the United Verde Branch respondent. Respondent denies that it is engaged in the refining of the aforesaid or any other ores at its United Verde Branch, Smelter Division.

V.

Respondent denies all and singular the allegations set forth and contained in Paragraph 5 of the complaint.

VI.

Respondent denies all and singular the allegations set forth and contained in Paragraph 6 of the complaint, and in this respect respondent alleges that all of the copper bullion, containing gold, silver, copper and other metals produced at its United Verde Branch, Smelter Division, is shipped in interstate commerce to the refinery of the Nichols Copper Company, located in or near the Town of Laurel Hill on Long Island, in the State of New York.

VII.

In answer to the allegations set forth and contained in Paragraph 7 of the complaint, respondent admits that it is now and at all times thereafter mentioned has been engaged at its mines at or near the Town of Ajo, County of Pima, State of Arizona, in the mining and production of

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gold, silver, copper and other ores. Respondent further admits that at its plant in or near the Town of Ajo, County of Pima, State of Arizona, it is engaged in the concentrating of said ores. Respondent alleges that the aforesaid mining and concentrating operations constitute the New Cornelia Branch of respondent, and respondent denies that its New Cornelia Branch is engaged in the smelting and refining of the aforesaid or any other ores.

VIII.

Respondent denies all and singular the allegations set forth and contained in Paragraph 8 of the complaint.

IX.

Respondent denies all and singular the allegations set forth and contained in Paragraph 9 of the complaint, and in this respect respondent alleges that all of the concentrates produced at its New Cornelia Branch, as described in Paragraph VII hereof, are shipped either in intrastate commerce to the smelter of respondent's Copper Queen Branch, Smelter Division, at Douglas, Arizona, or in interstate commerce through the State of New Mexico to the smelter of its Morenci Branch, Smelter Division, in the Town of Clifton, County of Greenlee, State of Arizona.

X.

In answer to the allegations set forth and contained in Paragraph 10 of the complaint, respondent admits that it is now and at all times thereafter mentioned has been engaged at its mines in or near the Town of Morenci, County of Greenlee, State of Arizona, in the mining of gold, silver, copper and other ores. Respondent alleges that the afore-

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said mining operations constitute the Mines Division of the Morenci Branch of the respondent. Respondent further alleges that the copper precipitates produced at its Morenci Branch, Mines Division, are shipped either in interstate commerce through the State of New Mexico to the smelter of the respondent's Copper Queen Branch, Smelter Division, at Douglas, Arizona, or in intrastate commerce to the smelter located in the Town of Clifton, County of Greenlee, State of Arizona. Respondent admits that it is now and has been since the first day of October, 1937, engaged in its smelter in the Town of Clifton, County of Greenlee, State of Arizona, in the smelting of the aforesaid ore and ores received from its New Cornelia Branch, as alleged in Paragraph IX hereof. Respondent further alleges that such smelting operations constitute the Smelter Division of the Morenci Branch of respondent. Respondent denies that its Morenci Branch, Smelter Division, is engaged in the concentrating or refining of the aforesaid or any other ores.

XI.

Respondent denies all and singular the allegations set forth and contained in Paragraph 11 of the complaint.

XII.

Respondent denies all and singular the allegations set forth and contained in Paragraph 12 of the complaint, and in this respect respondent alleges that all of the copper bullion, containing gold, silver, copper and other metals produced at its Morenci Branch, Smelter Division, as described in Paragraph X hereof, is shipped in interstate commerce to the refineries of the Nichols Copper Company, located in or near the City of El Paso, State of Texas.

*Board's Exhibit No. 1-j.***XIII.**

Respondent denies all and singular the allegations set forth and contained in Paragraphs 13 to 18, inclusive, of the complaint.

XIV.

Respondent admits the allegations set forth and contained in Paragraph 19 of the complaint and further alleges that the coal mining operations therein referred to constitute the Stag Cañon Branch of respondent.

XV.

In answer to the allegations set forth and contained in Paragraph 20 of the complaint, respondent denies that in the course and conduct of its business, as described in Paragraph 19 of the complaint, respondent causes and has continuously caused any quantity of the coal produced at its Stag Canon Branch to be transported in interstate commerce from the said Stag Canon Branch in the State of New Mexico to respondent's various plants, described in Paragraphs 1 to 12 of the complaint, in the State of Arizona. Respondent admits that it causes and has continuously caused large quantities of the coal produced at its Stag Canon Branch to be sold and transported in interstate commerce from its Stag Canon Branch in the State of New Mexico to, into and through states of the United States other than the State of New Mexico.

XVI.

Respondent denies all and singular the allegations set forth and contained in Paragraph 21 of the complaint and in this respect respondent alleges that it purchases natural gas from the El Paso Natural Gas Company, which said

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natural gas is transported by the said El Paso Natural Gas Company from its gas fields in the State of New Mexico and delivered for use at the Copper Queen Branch, Mines Division, the Copper Queen Branch, Smelter Division, and the New Cornelia Branch of respondent, located at Bisbee, Douglas and Ajo, Arizona, respectively. Respondent alleges that it purchases large quantities of coal for use at its United Verde Branch, Smelter Division, at Clarkdale, Arizona, which said coal is shipped to Clarkdale, Arizona, from Gallup, New Mexico. Respondent alleges that it causes and has continuously caused quantities of oil and other fuels to be purchased and transported in interstate commerce from states of the United States other than the States of Arizona and New Mexico to its various branches located in the States of Arizona and New Mexico. Respondent alleges that the custom ores smelted at its Copper Queen Branch, Smelter Division, at Douglas, Arizona, constitute the only raw material, other than ores produced by respondent, used in any substantial quantity in the production of copper bullion, and respondent admits as set forth in Paragraph II hereof that quantities of said custom ores are purchased and transported in foreign and interstate commerce.

XVII.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 22 to 26, inclusive, of the complaint, and in this respect respondent alleges that all of the copper bullion produced at its Copper Queen Branch, Smelter Division, and at its Morenci Branch, Smelter Division, located at Douglas and Clifton, Arizona, respectively, is shipped in interstate commerce to the refinery of the Nichols Copper Company located in or near the City of El Paso, State of Texas, where the said copper bullion is refined by the Nichols Copper Company for respondent on a toll basis. Respondent further alleges that

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all of the copper bullion produced at its United Verde Branch, Smelter Division, located at Clarkdale, Arizona, is shipped in interstate commerce to the refinery of the Nichols Copper Company located in or near the Town of Laurel Hill on Long Island, State of New York, where the said copper bullion is refined by the Nichols Copper Company for respondent on a toll basis. Respondent further alleges that the Nichols Copper Company is a subsidiary of respondent and is engaged in its refineries in El Paso, Texas, and Laurel Hill, New York, in the refining of copper bullion and in the manufacture, sale and distribution of electrolytic copper, sulphate of copper and other copper and copper alloy products. Respondent further alleges that it causes and has continuously caused electrolytic copper bars, manufactured and produced for it as aforesaid by Nichols Copper Company, to be sold and transported in interstate commerce from the States of Texas and New York to the various plants of the Phelps Dodge Copper Products Corporation, located in the States of New York, New Jersey, Indiana and California, as is more particularly alleged in Paragraph XVIII hereof.

XVIII.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 27 to 30 of the complaint, and in this respect respondent alleges that the Phelps Dodge Copper Products Corporation is a subsidiary of respondent and is engaged in the fabricating and manufacturing of copper products at its various divisions, named and with plants located, as follows: American Copper Products Division, Bayway, New Jersey; British American Tube Division, Bayway, New Jersey; Habirshaw Cable and Wire Division, Youkers and Nepperhan, New York; Inca Manufacturing Division, Fort Wayne, Indiana: Inca Manufac-

Board's Exhibit No. 1-j.

turing Division, Los Angeles, California. Respondent further alleges that among the copper products manufactured by Phelps Dodge Copper Products Corporation are copper rods, copper wires, stranded cables, trolley and contact wires, copper bus bars, commutator strips, flats and special shapes, weatherproof wires and cables, magnet wires, bronze and brass wires, condenser tubes, brass and copper pipe, copper service pipe, copper bus tubes, heater and cooler tubes, oil burner tubes, air-conditioning tubes, brass and bronze rods, paper insulated power cables, varnished cambric insulated wires and cables, asbestos insulated wires, cables and cords, rubber insulated building wires and cables, rubber power cables, flexible cords and cables, enameled copper wires, textile insulated wires, paper insulated wire, coils and transformers. Respondent further alleges that in the course and conduct of its business, it sells and has continuously sold large quantities of electrolytic copper bars produced for it at the El Paso and Laurel Hill refineries of Nichols Copper Company, as alleged in Paragraph XVII hereof, to the Phelps Dodge Copper Products Corporation, and that the said electrolytic copper bars are transported in interstate commerce from the States of Texas and New York to the above mentioned divisions and plants of Phelps Dodge Copper Products Corporation. Respondent further alleges that the Phelps Dodge Copper Products Corporation, at its Habirshaw Cable and Wire Division, with plants located in the City of Yonkers and in the City of Nepperhan, State of New York, is engaged in operations which include the insulating of copper wires and cables with rubber, paper, varnished cambric and asbestos. Respondent further alleges that large quantities of the products manufactured by Phelps Dodge Copper Products Corporation are sold, distributed and shipped by Phelps Dodge Copper Products Corporation in interstate and foreign commerce from its plants in

Board's Exhibit No. 1-j.

the States of New Jersey, New York, Indiana and California, to, into and through states of the United States other than the States of New Jersey, New York, Indiana and California, territories of the United States and foreign countries.

XIX.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 32 and 33 of the complaint, and in this respect respondent alleges that the Phelps Dodge Mercantile Company is a subsidiary of respondent and is engaged in the wholesale and retail distribution of general merchandise at its stores located in the Cities of Bisbee and Douglas, Arizona, and in the City of Dawson, State of New Mexico. Respondent further alleges that the Phelps Dodge Mercantile Company, in the course and conduct of its business, causes and has continuously caused quantities of the merchandise sold by it to be purchased and transported in interstate commerce from and through states of the United States other than the States of Arizona and New Mexico to its aforesaid stores in the States of Arizona and New Mexico.

XX.

Respondent denies all and singular the allegations set forth and contained in Paragraphs 33 and 34 of the complaint, and in this respect respondent alleges that the Moctezuma Copper Company is a subsidiary of the respondent and that the Moctezuma Copper Company of Mexico, S. A., a Mexican corporation, is a subsidiary of the Moctezuma Copper Company. Respondent further alleges that the Moctezuma Copper Company of Mexico, S. A., is engaged in its mines located in the District of Moctezuma,

Board's Exhibit No. 1-j.

State of Sonora, Republic of Mexico, in the mining and production of gold, silver, copper and other ores. Respondent further alleges that the ores so mined and produced by the Moctezuma Copper Company of Mexico, S. A., are shipped in foreign commerce from the State of Sonora, Republic of Mexico, to the smelter of respondent's Copper Queen Branch, Smelter Division, located at Douglas, Arizona, where the same are smelted and converted into copper bullion.

Respondent further alleges that the New Cornelia Cooperative Mercantile Company is a subsidiary of respondent and is engaged in the wholesale and retail distribution of general merchandise at its store located in the Town of Ajo, County of Pima, State of Arizona. Respondent further alleges that quantities of the merchandise sold by the New Cornelia Cooperative Mercantile Company are purchased and transported in interstate commerce from and through states of the United States other than the State of Arizona, to its aforesaid store in the State of Arizona.

Respondent further alleges that the Ajo Improvement Company, The Morenci Water Company, the Warren Company and the Upper Verde Public Utilities Company are subsidiaries of respondent and are engaged as public utilities in the sale and distribution of electricity and water to consumers in the communities of Ajo, Morenci, the Bisbee District and the Jerome-Clarkdale District, respectively. Respondent further alleges that the activities engaged in and the services rendered by the aforesaid public utilities are confined exclusively to the State of Arizona and are wholly intrastate in character.

XXI.

Respondent admits the allegations set forth and contained in Paragraph 35 of the complaint.

*Board's Exhibit No. 1-j.***XXII.**

Respondent specifically denies all and singular the allegations set forth and contained in Paragraph 36 of the complaint, and in this respect respondent alleges that on or about June 10, 1935, as shown by respondent's payroll records, a group of individuals employed by respondent on said date at its Copper Queen Branch, Mines Division, which said group constituted less than ten per cent of the total number of persons employed on said date by respondent at its Copper Queen Branch, Mines Division, and included some but not all of the individuals listed in Appendix "A" attached to the complaint, voluntarily and without notice to the respondent left their employment with respondent. Respondent further alleges that on and after June 10, 1935, said individuals, who voluntarily terminated their employment as aforesaid, thereby severed themselves from respondent's payroll and were no longer employees of or employed by respondent. Respondent further alleges that on and after said tenth day of June, 1935, and prior to the fifth day of July, 1935, respondent employed other persons to do and perform the work theretofore done and performed by the individuals in said group. Respondent further alleges that there was not on July 5, 1935, nor has there been at any time subsequent thereto, a strike in force or effect among the employees of respondent's Copper Queen Branch, Mines Division. Respondent further alleges that there was not on July 5, 1935, nor has there been at any time before or since said date, a labor dispute between respondent and any of the employees at its Copper Queen Branch, Mines Division. Respondent further alleges that since July 5, 1935, certain of the individuals listed in Appendix "A", attached to the complaint, who have applied for employment at respondent's Copper Queen Branch, Mines Division, to this date have not been employed by respondent.

*Board's Exhibit No. 1-j.***XXIII.**

Respondent denies all and singular the allegations set forth and contained in Paragraphs 37 to 41, inclusive, of the complaint.

WHEREFORE, respondent, Phelps Dodge Corporation, having fully answered the complaint herein, moves that the same be dismissed and that no further proceedings be had in connection therewith.

PHELPS DODGE CORPORATION

By **H. M. LAVENDER**

General Manager

STATE OF ARIZONA }
COUNTY OF COCHISE } ss.:

H. M. LAVENDER, being first duly sworn, upon his oath deposes and says that he is the General Manager of Phelps Dodge Corporation; that he has read the foregoing answer and that the allegations therein set forth and contained are true and correct to the best of his knowledge and belief; that he has signed the foregoing answer on behalf of respondent, Phelps Dodge Corporation, being thereunto duly authorized. PHELPS DODGE CORPORATION, by H. M. LAVENDER, General Manager.

Subscribed and sworn to before me this 20 day of January, 1938.

E. G. HICKS

Notary Public

My commission expires January 29, 1939

(SEAL)

Board's Exhibit No. 1-k.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and
INTERNATIONAL UNION OF MINE, MILL,
and SMELTER WORKERS, LOCAL No. 30.

CASE No.
XXI-C-266

Respondent's Motions to Dismiss.

Comes now respondent, Phelps Dodge Corporation, by its attorneys, Messrs. Ellinwood and Ross, William A. Evans and Denison Kitchel, and moves to dismiss the complaint in the above entitled case upon the following grounds:

I.

Respondent moves to dismiss the complaint herein upon the ground that as applied to the mining operations of respondent at its Copper Queen Branch, Mines Division, the National Labor Relations Act (Act of July 5, 1935; Public No. 198, 74th Congress; 49 Stat. 449) is invalid and unconstitutional under and by virtue of the provisions of the Tenth Amendment to the Constitution of the United States.

Board's Exhibit No. 1-k.

II.

Not waiving the foregoing motion, but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that any order which might be entered by the National Labor Relations Board against respondent, based upon the allegations of said complaint and under and pursuant to the terms and provisions of the National Labor Relations Act, *supra*, would be invalid and unconstitutional under and by virtue of the provisions of the Fifth Amendment to the Constitution of the United States.

III.

Not waiving the foregoing motions, but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that there was either prior to, on or subsequent to the fifth day of July, 1935, between respondent and any of the employees at its Copper Queen Branch, Mines Division, a labor dispute as defined in Section 2 (9) of the National Labor Relations Act, *supra*.

IV.

Not waiving the foregoing motions, but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that respondent, in the mining operations conducted at its Copper Queen Branch, Mines Division, was at any of the times therein mentioned or is now engaged in commerce as defined in Section 2 (6) of the National Labor Relations Act, *supra*.

Board's Exhibit No. 1-k.**V.**

Not waiving the foregoing motions but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that respondent has at any of the times therein mentioned or is now engaged in any unfair labor practice as defined in Section 8 of the National Labor Relations Act, *supra*.

VI.

Not waiving the foregoing motions but expressly relying upon the same, respondent moves to dismiss the complaint herein upon the ground that said complaint fails to state facts sufficient to establish that respondent has at any of the times therein mentioned or is now engaged in any unfair labor practice affecting commerce as defined in Section 2 (7) of the National Labor Relations Act, *supra*.

ELLINWOOD & ROSS,
WILLIAM A. EVANS,
DENISON KITCHEL,
Attorneys for Respondent,
Phelps Dodge Corporation.

Proceedings.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
 TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,

and

**INTERNATIONAL UNION OF MINE, MILL,
 and SMELTER WORKERS, LOCAL No. 30.**

CASE No.

XXI-C-266

Cochise County Court House, Room 2,
 Bisbee, Arizona,

THURSDAY, JANUARY 27, 1938.

The above-entitled matter came on for hearing, pursuant
 to notice, at 9:30 o'clock a. m.

Before: **THOMAS H. KENNEDY, Trial Examiner.**

APPEARANCES:

**DAVID PERSINGER, Attorney on behalf of the National
 Labor Relations Board.**

**ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM
 A. EVANS, 807 Title & Trust Building, Phoenix,
 Arizona, on behalf of Phelps Dodge Corporation,
 Respondents.**

PROCEEDINGS.

Trial Examiner Kennedy: Are you ready to proceed,
 gentlemen?

Mr. Persinger: The Board is ready.

Mr. Kitchel: Respondent is ready.

Proceedings.

Trial Examiner Kennedy: The hearing will be in session. This is a hearing called by order of the National Labor Relations Board pursuant to the National Labor Relations Act. The proceedings are conducted much the same as court procedure. We request all spectators to observe the usual court decorum. Any speaking, any talking that you have to do, kindly step out of the room to do it. When the hearing is in session, we do not permit smoking.

There is one official copy of the report made by the Official Reporter. Anyone who desires a copy of the report may make a contract with the representative of the Official Reporter.

If counsel expect at any time to move to exclude witnesses during any of the testimony, I would like to have that motion made at the beginning of the hearing before any witnesses are sworn. If you do not make it at the beginning of the hearing, it will not be entertained thereafter. Further than that, the rule that I expect to impose here is, when a witness is on the stand and being cross examined and a recess is called, that witness will be instructed not to talk to any counsel or any person represented in the matter unless counsel for both the Board and the respondent are present.

I believe those are all the preliminary remarks I have to make. I am ready to proceed.

Mr. Persinger: If the Examiner please, I will offer as Board's Exhibit 1, the file containing the pleadings in this matter, containing copy of the Board's Rules and Regulations;

Copy of the charge filed by Mr. Foley for the International Union of Mine, Mill & Smelter Workers Local No. 30;

Amended charge filed December 18th;

Copy of the complaint and notice of hearing, affidavit of service of the complaint and notice of hearing on corporation and the complaining union;

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Affidavit of service of subpoena duces tecum on Mr. Henrie, Assistant General Superintendent of the Mines Division, Copper Queen Branch of the corporation;

The original of an order granting an extension of time within which to answer;

Affidavit of service of the complaint and notice of hearing on the union, on the corporation, Copper Queen Branch, the corporation, New York office; the Employees' Association, and on Mr. Kitchel as attorney for the corporation;

The return receipts;

The answer filed by the corporation on the 20th day of January and respondent's motions to dismiss.

Now, I will offer as Board's Exhibit No. 2, an analysis of strikes in February, 1937, prepared by the United States Department of Labor, Bureau of Labor Statistics.

Trial Examiner Kennedy: Is there any objection?

Mr. Kitchel: Mr. Trial Examiner, we object to the introduction of Board's Exhibit No. 2 on the ground it has no bearing on the proceedings, and no foundation has been laid for its introduction.

Trial Examiner Kennedy: You make no objection to Board's Exhibit No. 1?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: Board's Exhibit No. 1 will be received in evidence.

(Thereupon the documents above referred to were received in evidence and marked as Board's Exhibit No. 1.)

Trial Examiner Kennedy: Does the Reporter have the appearances?

The Reporter: Yes.

Trial Examiner Kennedy: Do you have Board's Exhibit No. 2, Mr. Persinger?

Mr. Persinger: Board's Exhibit No. 2 is fastened to the front of the file.

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Trial Examiner Kennedy: Board's Exhibit 2 appears to be a publication of the United States Department of Labor and for the reason that it would be judicially noted by the Board in any event, the objection is overruled and it will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 2.)

Trial Examiner Kennedy: I notice here there is a motion to dismiss.

What is the pleasure of counsel on that motion? Does he wish that to be considered?

Mr. Kitchel: Mr. Trial Examiner, as those motions go to the sufficiency of the complaint as filed and do not have to do with the evidence which will be introduced during the course of the proceedings, we would like to have a ruling on those motions before the hearing proceeds.

Trial Examiner Kennedy: They are all included in one document, the written motions?

Mr. Kitchel: Yes.

Trial Examiner Kennedy: Do you wish to argue the motion orally?

Mr. Kitchel: No, I do not wish to argue them, I think they are included in the written motion in full.

Trial Examiner Kennedy: Do you have any points or authorities to submit?

Mr. Kitchel: There are none.

Trial Examiner Kennedy: Do you wish to speak on the motion, Mr. Persinger?

Mr. Persinger: I believe not, Mr. Examiner.

Trial Examiner Kennedy: We will take a 10-minute recess, and I will examine the motions.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Proceedings.

Trial Examiner Kennedy: The hearing will be in session.

The motions to dismiss are severally denied.

Mr. Kitchel: Mr. Trial Examiner, will our exceptions be noted to those rulings?

Trial Examiner Kennedy: You may stipulate between counsel that exceptions to adverse rulings will be automatically noted if you desire to do so.

Mr. Persinger: So stipulated.

Mr. Kitchel: It is agreeable with us.

Trial Examiner Kennedy: That will be the ruling in this case.

Mr. Kitchel: Mr. Trial Examiner, I would like at this time to make an amendment of the respondent, on page 8 of the answer, Paragraph 19, Line 2.

Amend the word "32" to read "31." That is, the figures "32" to read "31," and the figures "33" to read "32," so that the reference then is to paragraphs 31 and 32 rather than to paragraphs 32 and 33. That was a typographical error.

Trial Examiner Kennedy: Any objections?

Mr. Persinger: No objection.

Trial Examiner Kennedy: The amendment will be granted and I will direct the Reporter to make that entry on the original.

Mr. Persinger: Will counsel at this time stipulate that the charge and complaint may be amended to include the name of Earl Worden as a complaining witness.

Mr. Kitchel: We will stipulate to that, Mr. Trial Examiner.

Trial Examiner Kennedy: The complaint is amended to include the name of whom?

Mr. Persinger: Earl Worden, W-o-r-d-e-n.

Trial Examiner Kennedy: W-o-r-d-e-n. At what place?

Mr. Persinger: In the appendix, which contains the list of the complaining witnesses; and also in the body of the amended charge.

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Trial Examiner Kennedy: So stipulated and so ordered. The Reporter will make the addition.

Mr. Persinger: I will offer as Board's Exhibit No. 3 a certified copy of the Registration Statement of Phelps Dodge Corporation with the Securities and Exchange Commission, for some date in the year 1937; and also an amended statement which sets out the various properties of the corporation, its principal subsidiaries and their properties, and a brief statement of the business of the corporation.

Trial Examiner Kennedy: Have you presented that to counsel?

Mr. Persinger: Counsel have seen this.

Mr. Kitchel: We have a copy here, Mr. Trial Examiner.

We would like to object to the introduction, not knowing, first, what the purpose of the offer is. We object upon the grounds the registration offered is incompetent, irrelevant and immaterial. If it is offered on the Interstate Commerce issue, we maintain it has no bearing on the question of whether or not a labor dispute at the mines division of the Copper Queen branch of the Phelps Dodge Corporation would tend to obstruct the flow of interstate commerce.

Trial Examiner Kennedy: What is the purpose of the offer, Mr. Persinger?

Mr. Persinger: The purpose of the offer is to show the financial and operating set-up of the corporation and its wholly-owned subsidiaries, the location of its various properties, the inter-relation of those properties, and, in general, the business of the corporation, since the complaint is directed to the corporation and not the Mines Division of the Copper Queen branch.

Trial Examiner Kennedy: There is only one respondent, and that is the corporation. Is that correct?

Mr. Persinger: Yes.

Trial Examiner Kennedy: And this exhibit relates to that corporation?

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Mr. Persinger: It relates to the corporation. It shows the integrated nature of the operating set-up, including the subsidiaries.

Trial Examiner Kennedy: Do you recall the date upon which this was filed with the Securities and Exchange Commission?

Mr. Persinger: It was in the spring of 1937, I believe, originally in April, and amended in May; but I am not certain of the exact date, or the month. It is in there somewhere.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 3.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 3.)

Trial Examiner Kennedy: I suggest that the Reporter mark these exhibits as we go along. I will turn them over to you. (Passing documents to Reporter.)

Mr. Persinger, as to Board's Exhibit 1, I suggest it be subdivided by letters.

Mr. Persinger: That is satisfactory.

Trial Examiner Kennedy: Will you so mark it, Mr. Reporter?

The Reporter: Yes.

Mr. Persinger: Yes, beginning with the Rules and Regulations, and going forward.

I offer as Exhibit No. 4 a publication of the Bisbee Chamber of Commerce; the pages are not numbered, but on the second from the last page, headed "Hardy Pioneers . . . Mining and Ranching . . . Produce Wealth as well as Glamour," the single paragraph on the left at the top reading as follows:

"The Mule Range, with Bisbee and Tombstone marking the limits of its mineral area, has disgorged nearly a billion dollars in metals in a half century."

Proceedings.

Trial Examiner Kennedy: Merely that statement, is that what you wish in?

Mr. Persinger: Merely that statement.

Trial Examiner Kennedy: Will counsel stipulate that that may go in?

Mr. Kitchel: No, we will not stipulate, Mr. Trial Examiner. We do not know who made the statement, and upon what facts it was based. It was not made by any representative of the respondent.

Trial Examiner Kennedy: The offer will be refused. Counsel may have the exhibit, the proposed exhibit, separately bound and presented to the Board. That is the procedure in case exhibits are refused. If you desire, you may instruct the Reporter that that is what you wish done.

Mr. Persinger: I would like to have the Reporter, in that case—will counsel stipulate that that is a publication of the Chamber of Commerce?

Mr. Kitchel: Yes, we will so stipulate.

Mr. Persinger: I would like to have the Reporter cut out that paragraph and include it in the exhibits.

Trial Examiner Kennedy: Do you understand the procedure for the rejected exhibits, Mr. Reporter?

The Reporter: Yes.

Mr. Persinger: I offer as Board's Exhibit 5, a stipulation entered into by and between counsel for the Board and counsel for the respondent, covering the various subsidiaries and the various properties of the corporation and its subsidiaries, together with figures of production for the years 1935 and 1936.

In offering this, counsel have already agreed that certain additions are to be made to it, they will later be offered as a supplementary to this, and as a part of it. I think that will be satisfactory, will it not, Mr. Kitchel?

Mr. Kitchel: That will be satisfactory.

Mr. Persinger: The statement of the amount of natural gas purchased by respondent from the El Paso Natural Gas Company, this natural gas being used in certain of its prop-

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erties in Arizona. The amount of coal purchased by the respondent for use at its Clarkdale smelter and shipped from Gallup, New Mexico; the amount of fuel oil purchased by respondent and shipped to its various Arizona properties from points outside the State of Arizona; and on page 3 of the stipulation it is indicated that the total amount of copper refined for the year 1935 was in excess of 359 million pounds. That was refined at the two refineries at Laurel Hill, New York, and in El Paso, Texas. It is indicated on page 4 that the Phelps Dodge Copper Products Company fabricates a good deal of refined copper, fabricated in 1935 over 87 million pounds.


Counsel has agreed to present later the disposition of the remaining amount of copper which was refined but not fabricated by the corporation, and the same thing is true for the year 1936.

And on the final page of the stipulation, the plant of the Harbshaw Wire & Cable Division, or branch, I believe it is, of the respondent, is omitted and figures on that will be made available later by the respondent; and also the plant located at Los Angeles, California, has been omitted and figures will be later made available on that.

Mr. Kitchel: My Trial Examiner, we have stipulated that those are the facts as set forth there, and we also have told Mr. Persinger that we will get, in so far as we can, the answers to the additional questions that he has asked of us.

We do, however, object to the introduction of the stipulation in evidence upon the ground that it has no bearing on the question of whether or not an unfair labor practice, alleged to have occurred at the Mines Division of the Copper Queen Branch of Phelps-Dodge Corporation, has any bearing on interstate commerce; that the actions and activities of the subsidiaries of the Phelps-Dodge Corporation are absolutely irrelevant to that question.

Trial Examiner Kennedy: The objection is overruled. The Stipulation will be received in evidence as Board's Exhibit No. 5.



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(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 5.)

Mr. Persinger: Will counsel at this time stipulate that the business of the Respondent and its subsidiaries in 1937 was substantially unchanged from that during the years 1935 and 1936.

Mr. Kitchel: We will not stipulate to that, Counsel. Perhaps I might word it this way: We will stipulate that the facts as shown in the stipulation covering the years 1935 and 1936 are indicative of the facts which would be found for 1937 as to the business of the corporation.

Mr. Persinger: Does counsel know if there has been any important change in the set-up for the year 1937?

Mr. Kitchel: No, not that we know of.

Mr. Persinger: I will ask counsel at this time if progress has been made in securing certain information required in the subpoena duces tecum?

Mr. Kitchel: In answer to that question, we have here available and will turn over to counsel at this time, the material called for in paragraph 6 of the subpoena, the material called for in paragraphs 15 through 19.

I would like to state for the purposes of the record that Mr. Persinger and myself have discussed this matter. The subpoena was such that it might have taken several months to assemble all of this material, and that we are making a conscientious effort to have the rest of it just as soon as we can, which should be a matter of just a few more days.

Mr. Persinger: And I will make the further statement, that a good deal of the material called for in the subpoena has been included in the stipulation.

Trial Examiner Kennedy: Has been what?

Mr. Persinger: Included in the stipulation.

Trial Examiner Kennedy: I see.

Mr. Persinger: Mr. Pidgeon, will you take the stand, please.

*G. C. Pidgeon—For National Labor Relations Board—
Direct.*

G. C. PIDGEON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Give me your full name, please.

The Witness: G. C. Pidgeon.

Trial Examiner Kennedy: How do you spell your last name?

The Witness: P-i-d-g-e-o-n.

Direct Examination.

Q. (By Mr. Persinger) Mr. Pidgeon, are you an employee of the Phelps-Dodge Corporation, Copper Queen Branch, Mines Division? A. I am.

Q. Are you familiar with the properties of the Mines Division, the physical properties? A. I am.

Q. Will you tell us in your own words of what the surface properties of that division consists? What are the actual buildings and approximately where are they located with reference to each other and to the town of Bisbee, and where are the openings to the mine itself? A. Well, there are about 30 or 40 shafts in the district, of which there are at the present time four main operating shafts. There are probably, oh, less than 10 other shafts, which are at present operated by lessees.

Now, do you wish me to go into all of the shafts, or the four principal ones that are operated by the company?

Q. The four principal ones operated by the company.
A. The Junction Shaft, the main shaft of the company, at the present time is located in the town of Lowell. At that shaft are located the principal shops of the company, the supply warehouse, one of the main power plants of the company, and just outside of the fence are the general foreman's office, the office of the master mechanic, the engineering and assay offices of the company.

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Q. Do you know the source of the power? A. We have two power plants in the district, and some of the power is distributed from Douglas. That is, I don't know just what the flow of power is between Bisbee and Douglas, but there are two main plants in this district.

Q. What fuel is used for generating the power at Lowell? A. Gas.

Q. Natural gas? A. Yes.

Q. What are the principal shops which you mentioned as being located at the Junction Shaft? A. There is a machine shop, boiler shop, tin shop, electrical shop, and blacksmith shop; also the carpenter's shops, pipe shops, and a drill-sharpening shop.

Q. What are the principal uses of the power produced at the power plant in connection with the mine? A. They furnish compressed air, different workings; they furnish electric power for the hoists; they furnish electricity, both surface and ground juices, and they furnish power for the pumps.

Q. What sort of pumps? A. What sort of pumps?

Q. I mean, are they water pumps? A. Yes, sir.

Q. Do you have pumps for ventilating? A. We have fans, as we call them, for ventilating.

Q. Is there any other surface equipment of which you can think which would be important? A. No, I think not. There is a framing shaft for the framing of mine timbers.

Q. At the opening of each of the other three shafts, do you have approximately the same surface equipment? A. No, sir. Those shops are central shops, and practically all the work of the different mines is taken to the Junction Shop.

At the Camel Shaft, which is next in importance, there is a change house, hoist house and a small framing shed in which a part of the timbers used in the mines are framed.

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Q. The hoist, I take it, is an elevator which runs down into the mine? A. The hoist engine—what we call the “hoist”—is an engine that operates the elevator, or, as it is termed in the mine, a “cage.”

Q. In relation to the Junction Shaft, where are the other three shafts located? A. The Camel Shaft is approximately half a mile from the Junction Shaft in an easterly direction; the Cole Shaft is roughly a mile in a southwesterly direction. The Sacramento Shaft is a half a mile in a northwesterly direction.

Trial Examiner Kennedy: What was the name of that third?

The Witness: Cole.

Trial Examiner Kennedy: How do you spell it?

The Witness: C-o-l-e.

Trial Examiner Kennedy: G-o-l-e?

The Witness: C-o-l-e.

Q. (By Mr. Persinger) Now, will you describe as to a visitor the actual procedure of entering the shaft, the type of work that is carried on inside the mine, the method for removing the ore? A. Well, after you have changed your clothes and gone to the collar of the shaft which is the intersection of this opening with the surface, you come to the shaft which is a vertical opening extending down into the earth. They are all different sizes, and I might take the Junction Shaft as being typical.

The Junction Shaft, its outside dimensions are about 31 feet by 10 feet. The inside diameters are about 29 feet by 6 feet. The 29 feet in length is divided up into five compartments, the one compartment is for air pipes, water pipes, electrical cables, and material of that nature that is needed in the operation of the mine. That compartment is seven feet long. The others vary slightly and are between four and a half and five feet along the length of the shaft and six feet in depth across the width of the shaft.

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We step onto a cage. At the Junction that cage has two decks, each deck for the shift going down holds 12 men. We get on that cage and go down.

Q. How many men operate that cage? A. There is a hoist engineer and there are two cagers. As a rule, there is but one man at the cage at a time. This man operates the cage.

You get on, he opens the gates, there is a bar across, probably 30 inches high and there is a safety gate, and there is no chance of falling off the cage, and you are lowered into the mine.

At different points in the mine, there are what we call levels. At these levels there are tunnels going off in various directions. Some of those tunnels are several miles long. As you get off the cage to enter, you don't at once go into this tunnel, you go into a station which is larger than the tunnel. It is probably, most of them are the full width of the shaft. That is, at some places, they are slightly smaller. That station would be—I should say a minimum of 15 feet wide up to 30 feet wide, and in length a minimum of 20 to 25 feet up to 75 or 80 feet in length.

There are a number of small tracks for mine cars on these levels, and they are used as a storage for timber, cars, and other supplies.

As we step off and start in one of these tunnels, one of the first things we pass over is what we call a grizzly in the track. It may be either in the track or on each side of the track, which is an opening, in the bottom of this drift, covered with rails, a space from 12 to 15 inches in diameter. The purpose of that is to receive the rock dumped from ore in waste cars in the mine. We pass over that and into one of these tunnels, which we term "drifts" or "cross-cut."

Q. Now, what happens to the ore that is dumped into that opening? A. The ore goes from these cars into what

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is called a pocket, and that pocket at the Junction extends to anywhere from 40 to 75 or 100 feet below the level at which you are on. From there it is drawn into skips in the shaft and hoisted to the surface, where it is placed into railroad cars.

I have a section of a shaft there showing the location of pockets, if you would care to look at it.

Q. Well, we can't make it a part of the record very well.

A. You can't make it a part of the record, but just as a matter of information it may enlighten you.

Mr. Persinger: Would you like to look at it, Mr. Examiner?

• Trial Examiner Kennedy: Do you think the locale has any materiality to the issues here?

Mr. Persinger: I think it may clear up the meaning of the names of certain occupations, you see.

Trial Examiner Kennedy: Very well.

Q. (By Mr. Persinger) We might look at that after you have finished taking us through the mine. A. We pass through this indoor tunnel. We drive these tunnels, both for ore extraction and for the purpose of finding ore, for ventilation purposes, and for various other reasons. This tunnel is an opening, the smallest of which in the mine, I think, are about $5\frac{1}{2}$ feet wide and $7\frac{1}{2}$ feet high. They vary in width up to—some of them are 8 feet wide and 10 feet high. Some of those are of such nature that they must be timbered; some of them stand without any support, and others receive what we call a coat of gunnite, or several coats of gunnite, which is a mixture of cement and sand that is sprayed on the wall and gives a more of a seal coat to prevent oxidization than anything else.

As we pass along this drift and encounter ore, and that ore is developed—that ore is developed by crosscuts and drifts in the ore to determine the extent of it, and after it

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is found, we drive a raise on that ore to determine its vertical extent. The major part of the ore that is being mined at the present time is mined by what we call the incline cut and fill method. It is a modification of what is universally known as the real method of stoping.

As we start stoping in there, if we would come into a stope that was just starting, we would see the back or roof of this tunnel had been shot up and widened for probably 10 feet above the floor of the drift, might even reach 15 or 18 feet, depending on the strength and character of the rock.

After that ground is drilled, blasted and cleaned out, there are timbers placed in there. And there is then what we call a row of leads along the main drift where we start stoping operations. The back is drilled as high as it is safe and convenient. We go up and take that ore out and there are grizzlies placed over that, timbers in the tunnel, which are planked over, and grizzlies and chutes put in there from which the ore is drawn into the motor cars.

When this first section has been mined as far as it can be mined, or as far as the plans call for the mining, a raise is driven up from the highest point in the stope to the level above. This raise, which is maybe vertical or inclined, in most of our hard ground, is a hole roughly 6 feet in diameter, and it is used for the purpose of ventilation, also for the purpose of introducing fill into that stope. After the ore has been extracted and the opening is as large as can be made either conveniently or safely, that hole is filled almost to the back, as we term it, with waste material. If there is ore underneath this, if the tunnel itself has been in ore and the tunnel is going down before that space is filled in, a floor is laid so that in later mining, when it comes up they will have this floor of plank to come up under and not the loose fill or muck that is in the workings.

After this first cut has been taken out and the fill has been made, that loose material is covered with planks, plank

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floor, and then the operation starts back from the main row of leads again and another cut approximately 10 feet is taken up, care being taken when possible to have that cut made on the angle of repose of the ore, the idea being that all material that can will slide to this row of leads. This row of leads, which is over the drift, is composed of timbers, either 8 x 8 inches in size, or 8 x 10 inches, and varying in height up to, well, they are approximately 8 feet. The length of the timbers varies with the thickness of the timbers, and the framing requirements.

So you have in there what we call a square set, 6 feet square center to center of the timbers, and the set above 8 feet 6 inches high, and they are built one on top of the other. That is, as the ore is extracted above the leads and we take a new cut, this row of leads is always at the bottom of the cut which we are taking, and is covered with grizzlies, so that large boulders will not go down in the chute below.

Incidentally, a chute or pocket is the point from which the ore is drawn from the raise into the car. From then on the stope becomes a succession of cutting, which is drilling, blasting and strengthening the ore and filling. The extent of the cycle depends on the nature of the source from which the fill is maintained, and also the readiness with which it can be gotten into the stope.

As the ore is drawn out here, it is drawn into motor cars. The motor crew usually consists of two men, and is drawn from there to the shaft where it is dumped into the pockets.

From the pockets it is drawn into the skips, and from the skips it is hoisted through the shaft and dumped. At the Junction it dumps onto a short conveyor belt which takes it into the railroad cars.

At the Camel it goes into a storage bin.

That is one system of mining. Where the ground it is not strong enough, where it is heavy, hard to support and it is unsafe and unwise to open up a considerable amount of ground, there are various other methods.

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One method used in other parts of the mine is square-setting, in which no more ground—these square sets are either 5 x 5 in their horizontal dimension and 8 feet high, or 6 x 6 in horizontal dimension and 6 feet high.

In the square-set system of mining, it is very seldom that more ground is opened up at one time than will accommodate one set of timbers.

In the top-slice method, you start at the top of the ore body instead of at the bottom. The top of the ore body would be square-setted off and the timbers blasted down, and another cut taken underneath. Those slices are about 10 feet in vertical extent. Their horizontal dimensions depend on the size and shape of the ore body.

At the Junction, the stopes are of all sizes and very irregular. In the Camel mine, these cut and fill sections, which I have attempted to describe, are about 40 feet long, and they will run back anywhere from 40 feet to, in some cases, 60—I should say, 80 feet in width.

Their vertical extent in the Camel—we try to take them through 200 feet in a succession of cuts and fills. It is impossible to take these sections out of the whole country so that in a good many cases we have left pillars, and probably the average size of the pillar in the Camel mine is 30 feet. Those are pillars of solid ground that are left to support the levels above, and also support the fill or gob, and after the gob in the excavation has settled, solidified for some time, then it is safe to go in and mine out the pillars by some other method of mining.

We use sometimes a fill that is solidified to such an extent that we can cut and fill in it. In most cases we mine that by what we call the Mitchell Slice.

In the tunnels, the cycle of operations there doesn't vary a great deal. A miner goes in in the morning and inspects his face, washes down his face, examines it to see whether there has been any unexploded powder left in the holes, washes it thoroughly, and then he sets up his machine and

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does what we call "drills his round;" drills holes with a machine and steel into the rock for the purpose of driving this tunnel ahead.

The number and depth of those holes will depend on the nature of the ground, the size and shape of the opening desired, and the experience of the miner. He has a helper to set up his drill. After he has drilled a sufficient number of holes he tears down that machine, loads the hole with powder and blasts it. The next shift coming on does what we call "mucks out the drift." Most of our mucking out is mechanical mucking. That consists of small shovels run by compressed air, that shovel this material into the cars.

In a few cases in the mine we do have hand shoveling, and there will be one or two men working in the place, depending on the size of it, the amount of material there is to get out, and the urgency required in the operation.

Raises are vertical or inclined openings in levels, for purposes of ore extraction, for purposes of getting waste into empty stopes, for the purposes of ventilation, or for the purposes of transporting men and material between different levels in the mine. They start out on the fill; they drill what they call the stoping machines. The other machines and cross-chutes are mounted on a bar. This machine is self-contained, and is better adapted to drilling vertical holes—vertical holes upward.

A man goes in, drills it, and, if the ground is good, he doesn't timber the hole case. He puts stalls across, which are supports between the walls, and in the good ground are used mainly as supports for ladders, to provide the men coming in—This raise is divided into two parts: One is a man-way, and the other is a chute. The chute portion of the raise is the part in which the rock above the raise passes through.

The man-way has a ladder in there and has access to the raise, and it also has timber-way in which supplies are

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hoisted up. They hoist up supplies, timber, powder and steel with which to drill and blast the ground.

Q. All the drilling is done by the miner? A. Sir?

Q. All of the drilling of the stope, as well as the tunnel, is done by the miner? A. Yes. As a rule, there are both drift miners and stope miners. A man will have his working place and stay with it for various lengths of time. Other men who are on drainage have ditches to be dug, ditches to be cleaned out. The stopes must be timbered up.

I don't know whether I have made that stoping operation very clear. I have two different methods of stoping outlined on the maps there (indicating), which are available for you if you would care to see them.

Q. I believe the record is all right on that, although I shall want to look at your map.

Is there any other end of the mining operation which you think is important, which you have not mentioned? A. Well, there is the matter of drawing the ore from the pockets into the shaft into the skips.

Q. What is a skip? A. A skip is—well, we might term it a "bucket."

In the Junction shaft, these cages—one deck of the cage in which the men ride is swung off into a skip. It is an iron box, roughly 4 x 4, 6 feet high, which, depending on the nature and weight of the ore, will hold from 5 to 7 tons.

The ore is drawn. It goes first from the pocket into a cartridge, which is a measuring device. From that cartridge it is drawn by doors into the shaft and is emptied directly into the skip. After this skip is filled—or, rather, the cartridge emptied, the signal is given to the hoist engineer, and he hoists it to the surface, where it is automatically dumped.

The reason I say, "depends on where it is filled," is because the cartridges themselves are of different sizes, depending on the weight of the ore coming out of them—that is, in order not to overload the hoist engine.

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For ventilation, there are fans. In the Junction, for instance, they are located on the eighteen hundred, two thousand, twenty-two and twenty-seven hundred levels. They have main ventilation fans that draw the air out of the shaft and pass it through certain areas through the mine to the up-cast or outlet shafts.

I might say here that we take a certain amount of air into the mine. We take it down through the Junction, Campbell and Sacramento shafts and transport it through the various workings underground, and the outlets for that particular area are the Dallas, Oliver and Gardner shafts.

In the Cole area, there is a separate ventilation unit from the system on this side. The air there is taken through what we call the Cole No. 3, and the Boras. It is discharged through the Cole shaft and a small amount of it through the White-tail Deer shaft.

It means that a miner going into the mines is, as a rule, going down into the fresh air.

Q. Is there any open-pit mining done at the Copper Queen Branch? A. There has been no open-pit mining done since about 1929 or '30, at which time the pit was exhausted and the shovels were taken out and the remaining ore at that time was what we call "glory-hold."

In the bottom of the pit, which was of more or less level floor at that time, there were 12 raises driven up from the 400-foot level, spaced about equally in the bottom of this area, and then these holes were widened out and the material shot into these raises, and it was drawn off through from the levels above and hoisted to the Sacramento shaft.

We do have one system that we are operating now, and that is the cave-in system, which has not been mentioned. There is a portion of the mine over there in which a block of ore is under-cut. By that, I mean we take this block of ore which is shaped, roughly, as this room is shaped. We drive a haulage level at various heights—I should say, from 50 to 150 feet above that, depending on the ore body.

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We drive what we call a grizzly level. There are raises connecting this haulage level and the grizzly level.

The purpose of these raises is to serve as ore passes from the ore above to the haulage level below. The purpose of the haulage level is to draw the ore off from the raises into cars where it can be transported to the shaft, where it is hoisted.

In the grizzly level we have smaller drifts driven across there and grizzlies installed. Our grizzlies are spaced 20 feet in one direction and 40 feet in another. The ore is drawn from what we call the under-cut level, 17 feet above the grizzly level, into this grizzly level.

The block there would be—assume the floor of this floor is the under-cut level and that each 20 feet here—that at 20-foot centers are small raises covering the entire floor of this building.

Around the outside of it on the four sides of it, we drive what we call a shrink. It is in height to the top of the ore body from the under-cut level to the top of the ore body. All around the wall it is from 3 to 5 feet in width, and the purpose being to cut this block of ore off from the remaining ore in the ore body, or from the waste material surrounding the ore body.

After these raises are up and the shrinks are driven, the tops of these raises are connected with small drifts running through.

As we have a grid in, we have this floor covered with a grid with small drifts running at right angles to each other on 20-foot centers. At each point at which these drifts cross, there is a raise which is a hole connected with the grizzly level below.

A. (Continuing) After that has been laid out, our small drifts and our raises run, then we run what we all call 'undercut stubs.' These pillars that are left in there are approximately 15 feet square, and into these pillars we

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drive a short-stub drift. It is approximately 7 feet wide, and we usually try to make it about 8 feet long. That depends also on the nature of the ground. After that has been driven into this square block of ground, then we drill out into the ground in all directions, the top and sides, but not the bottom. And after that is done, these holes are filled with powder and blasted, so we have a block in there about the size of this room, and the ore has been cut to the top of the ore along the side and the bottom has been shot out from underneath it, and that ore is drawn out through these raises to the grizzly sets where the boulders that are too large to pass through the grizzly are broken up and the remaining ore drawn to the haulage raises and out into the motor cars below.

Q. Now, you mentioned one thing before we actually got into the mine, a change room. What is that? A. A change room is a building where a man goes to work in the morning. He changes from his street clothes to his working clothes. He is provided with a locker, usually locked. It is numbered and each man has his individual locker. When he goes in there in the morning he changes his clothes, gets into his working clothes, goes down into the mine, comes up at night, and there are showerbaths there. He takes a shower bath. There is hot and cold water. He changes his clothes for his street clothes. In the morning he goes on, changes into his mining clothes, goes to the carbide house, fills his lamp with carbide, fills his lamp with water, and goes down into the mine.

We have some canteens in the mine now, and when a man goes to the Refrigerating Plant he fills his canteen with refrigerated water and takes it with him. This refrigerated water is also piped down to various levels, to different points in the mine. If they are too far away, where the water would get warm, it is drawn from pipes into tank cars, and these are placed at different centers in the mine.

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that are available to the different working points, places where the most men gather at different times.

A man is equipped with what we call a "hardboiled hat," hard-toed shoes and goggles. He is not allowed to go into the ground unless he possesses these. A hardboiled hat and hard-toed shoes are shoes and hats that are made of certain material so that they will resist falling rocks, avoid cuts, crushed heads and damage to the men. Those three items, the rules are that he must have those at all times. And the visitor, if you are supposed to be a visitor going underground, you are not allowed to go underground without a hardboiled hat and hard-toed shoes. The goggles, to the casual visitor, are not necessary. When a man takes his place underground, he eats lunch there. In certain areas there are lunchrooms provided. In other areas, where there is plenty of room and conditions are good, they are not—special lunchrooms are not provided.

Trial Examiner Kennedy: Mr. Persinger, I think we might take a recess at this point. We will be in recess for ten minutes.

(Whereupon a short recess was taken.)

Trial Examiner Kennedy: The hearing will be in session.

Q. (By Mr. Persinger) Will you tell us something about the water-pumping system, and the purpose of it. A. Water enters the mine up in the vicinity of Bisbee, the surface and underground water is—Go back there and just forget that.

You might say that the czar shaft, which is the shaft in the town of Bisbee, the former operating shaft, has a depth of 400 feet, and the ore bodies lie deeper as we go off to the southeast. The 400 feet at the Czar shaft, the depth of that shaft, becomes 2700 feet level by the time we get to the Junction, which is about 2940 feet below the collar

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of the Czar shaft. I am telling you that so you can get an idea of the way the ore bodies dip off to the southeast, and there is also a difference of about 230 to 240 feet in the levels of the same name in the southeastern part of the camp—not the camp up here. For instance, up here, the 400 level, 400 feet below the surface, that is south of this part of the camp and Junction, the 400 feet level would be 625 to 650 feet below the collar of the czar shaft.

Water originates in the mountains here, and is also taken through old workings where the surface has been fractured and flows in the Czar area to the 400-foot level. From there the water passes through a raise to the 600 level of the Holbrook shaft, passes from the Czar area over to the Holbrook area, is gathered in there and that water passes through a raise and goes to the 1000 level of the Gardner.

In the western part of the camp, that is, and the southwest, the Shadduck mines, the Irish Mag, Oliver, that water is collected on the 800 level of the spray and flows also to the 1000 foot level, joins with the water from the Czar and Holbrook areas and is led to the Gardner shaft on the 1000 level where there is a concrete bulkhead with control valves for letting that water out. That provides storage in times of flood for the waters from the western part of the camp, they can be shut off from the southeast.

From there the water—from the 1000 Gardner the water goes to the 1200 of the Lowell to the 1200 level and part of it to the 1400 level. It is taken across to the Lowell shaft, from there to the Sacramento and is led through various raises down to the 1800 level and is taken finally to the 2200 level of the Junction shaft where the main pumps are installed. Water is below the 2200 level, that water is led to the 2700 level of the Junction mine where there is an auxiliary pumping plant. The water from the 2700 level is pumped to the 2200 level into sumps provided for them

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and from there it is pumped directly to the surface. The pumps at present have a capacity, I think, of between 8,000 and 8,500 gallons a minute. At present water pumped from the mine is between 5,000 and 5,500 gallons a minute.

Water from the Cole area is taken by way of the Briggs mine, thence to the Junction pumping plant and pumped to the surface. It is led by—from the surface the water is diverted to different parts of the district for irrigating purposes, and the balance is spilled out into settling ponds about four miles south of the town, in the flat between Bisbee and Bisbee Junction.

Ditches are provided also between the Campbell and Junction shafts on the 2200 level. We have a pipeline, part of it 10-inch pipe and part of it 12-inch pipe to transport the water because the ditches were not large enough and the workings were not large enough to carry it, so we carried that in this large pipe where they were draining, or attempting to drain, the extreme southeasterly part of the workings for future development.

Part of that—into all of these drifts, all of our drilling machines, underground, of course water must be piped, all water for the operation of drills, not only water, but compressed air. The drilling machines operate with compressed air and water. Compressed air and water must be available at all working places.

Q. Now, will you explain to us the various shifts and the times they come on, and the difference in their work, if there is any? A. The day shift comes on at the present time at 7:30 in the morning and comes up at 3:30 in the afternoon.

The afternoon shift goes on at 5:00 o'clock and comes up at 1:00 o'clock.

Shifts which are on a three-shift basis, as the Junction pump men and the Junction cagers, have a day shift and afternoon or night shift and a graveyard shift. Their hours

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are from 7:00 to 3:00 and from 3:00 to 11:00, and from 11:00 to 7:00.

During the Summer those shifts are a half hour earlier, each shift goes on and comes off a half hour earlier.

Q. Do you remember the hours of the shifts and how many were being operated back in about July, in 1935; just before the walkout and strike? A. I think the shifts were the same summer hours. As a matter of memory, there has been no change. For one or two years we did go to work an hour earlier, I think. I am not sure on that, although I believe that half-hour has held for some years now, and so far as the nature of the work goes, it is no different. There are a few men on odd shifts, but comparatively few.

Q. Do you know how many men actually are employed at the present time on those different shifts, approximately? A. No, I do not.

Q. Now, will you tell us the geographical locations of the three towns in this series, and where the different four principal shafts are located with reference to the three towns?

A. Well, the main town is Bisbee, the unincorporated town of Lowell, the center of it is about two miles in an easterly direction.

Q. That is down the mountain from Bisbee? A. Down the canyon.

Q. Down the canyon? A. Yes, sir; and the town of Warren is about two miles in an easterly direction, southeasterly direction from the town of Lowell. The Junction shaft is situated, I should say, on the southerly side of the town of Lowell.

The Sacramento shaft is about 2600 feet in a westerly direction from the Junction.

The Campbell shaft is about 2700 feet in an easterly direction.

The Cole shaft is, I should say, a mile in a southerly direction, maybe a little southwest.

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Mr. Persinger: I know of no further matters that I want to go into at this time. Does counsel have anything?

Mr. Kitchel: I have a question which perhaps would help clarify this picture, Mr. Pidgeon.

Cross Examination.

Q. (By Mr. Kitchel) I wonder if you would give us something on the subject of safety and safety regulations in practice in the mines. A. The safety work? Did you wish to go into the whole set-up on that?

Q. Well, perhaps I should confine that a little more to some of the hazards and the rules which are laid down in order to avoid accidents with respect to those hazards.

Trial Examiner Kennedy: Well, counsel, I don't see the materiality of that line of questioning. If you can show me where it would be material——

Mr. Kitchel: Well, I thought it would be giving a little better picture of the actual occupations of the men in the mine, which I thought Mr. Persinger was apparently after. I have one particular question in mind, and I will confine myself to that.

Trial Examiner Kennedy: Very well.

Q. (By Mr. Kitchel) Do you have a safety rule with respect to the men working by themselves in the mine? A. There must be a man—the rule does not prevent a man from working alone, but there must be a man within call at all times.

Q. As a general matter, do the men work in teams or pairs, rather, not by themselves? A. Yes, they do, except in probably the driving of some drifts or crosscuts where there is a man goes in, sets up his drifts. The miner has a man to help him set up his drill; then he operates his drill alone, except for a visit of the tool-nipper, who is the man

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Cross.*

who brings sharp tools in, takes away the dull tools; or, maybe, if there has not been sufficient steel or sufficient tools, he brings new tools that have been ordered.

If there is a timbered working, there a timberman goes in, or, a man goes in and gets his timber, and if it is heavy enough he gets aid to bring them. Then he is visited several times during the shift by the shift boss, and, as a rule, maybe once a day or maybe every other day, by the foreman. Then, when he sets off his blast, the rule is that no man shall blast alone. He must have help in loading his holes and in setting off his blast.

Q. Does cooperation between the men working together on any particular job have any bearing on the efficiency of the operation? A. Well, it certainly does. In any line of work, the men must get along together, or there is no such thing as efficiency. Those men must work together as a team.

Q. Does that cooperation have any bearing on the safety involved in the work? A. It does to a very large degree. The work of the two men in a working place is not always set out in detail by the boss, and as he tells what he wants done, at certain times he tells each man what he has to do. During the shift there will be odd jobs come up that the men decide among themselves which one is going to do that job.

I could picture in a stope where a man was going to be drilling, and if another man was going to bar down the rock under which the first man was going to work and didn't do a thorough job of it, he might put his partner in quite serious danger.

Q. Can you give any other examples of where that cooperation is essential to safety? A. Well, men drawing ore out of a chute, there must be good cooperation between the motorman and his swamper, who is the man that loads the ore into the cars. Any slight movement of that car while the ore was coming down might deflect a rock in such a way that it might hit the swamper.

*G. C. Pidgeon—For National Labor Relations Board—
Cross.*

A drill set up insecurely, not tightened thoroughly, might fall. A machine might fall and injure the driller.

Q. Mr. Pidgeon, going back to the geographical set-up of the properties, what, roughly, would you say is the total acreage covered by the various shafts? You confined your description before to the entire properties of the company. In other words, not perhaps the actual acreage, but it would be easier to give a description of the territory covered. A. Well, there are about 9,000 acres of patented mining claims. That's correct within a hundred acres either way. In addition to that, there are 3,200 acres of land that has had homestead patents or various patents of other nature. I should say, the extent in a northwest, southeasterly direction is about four or five miles. The extent in a northeast, southwest direction would be three to four miles. Various other properties that do not belong and which are not controlled by Phelps-Dodge lie in those boundaries. Some of that ground, Phelps-Dodge owns both mining and surface rights. Small portions of it, they own the mining rights and not the surface rights.

The land includes a small part of the City of Bisbee, all of the town of Lowell, all of the town of Warren, and a portion of the town—well, in fact, all of the townsite of Don Luis, or the Hedburg townsite, as we know it, south Bisbee, Tintown, and smaller little settlements.

Q. In addition to the four shafts which you have discussed, how many more are there; not by name, but by number? A. I should say there are a total of between 30 and 40 shafts.

Q. Do they extend throughout this region that you have described? A. Yes, they do. They cover the region quite thoroughly.

Q. At these various places and at other places, is there located property of the company; personal property, buildings and equipment? A. At certain points there are.

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Redirect.*

Mr. Kitchel: I think those are all the questions we have, Mr. Examiner.

Mr. Persinger: I have just one, Mr. Examiner.

Redirect Examination.

Q. (By Mr. Persinger) What is a swamper? A. What's a swamper? Perhaps I should say a helper. The motor-man has a swamper. He is the man that helps him. The motorman runs the motor and the swamper pulls the ore out and makes up the train. He is practically the brakeman on that train.

Mr. Persinger: I think that is all.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: I have a few questions.

Examination by the Trial Examiner.

Q. (By Trial Examiner Kennedy) Will you describe the drift for us? A. A drift is a tunnel.

Q. Is that the name you apply to all tunnels in the mine? A. No, we call them indiscriminately "drifts" and "cross-cuts." Actually the words "drifts" and "cross-cuts" came from vein mining, which we do not have here; and a drift was the—I might say—tunnel or opening driven along the strike or along the length of the ore body.

The cross-cut was the opening driven at right angles to the drift and cut through the ore body or ore zone. Our ore bodies here are very irregular, and there is no such thing as a true drift or true cross-cut.

Q. But what you term a "drift" goes out from the stations that you spoke of, is that correct? A. Yes, sir.

Q. And the cross-cuts feed into the drift? A. It is actually an underground tunnel. I should say, the smallest are 5½ feet wide and 8 feet high. They may be in natural rock; they may be fully timbered. As a rule, sets of timber

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Redirect.*

are spaced 5 feet apart and a set is two posts, one on each side, with a cap across the top, and then what we call "lagging" is placed over the top, and also along the sides to prevent loose material falling off.

Q. Now, what is a stope? A. A stope is an extraction working from which the ore is taken for mining.

Q. An extraction work? A. An extraction working.

Q. Well, explain that in more common English. A. You go in and find the ore and develop it with the drifts and cross-cuts, and it is developed in different levels, or the ore body may lie between the levels. It may not go to either of the main levels.

Incidentally, have I made clear to you what a level is?

Q. Yes, I think so. A. And these levels are connected with raises. Then the openings, which are made in extracting the ore, are called "stopes."

Q. Made from any particular point? A. No. That depends altogether upon the method of mining that is used, which varies with the nature of the ground. Perhaps you could go into Inspiration and Miami, and they have nothing but drifts. As you go into Cananea, and it is mostly cut and fill and top soil. In Bisbee the ore bodies are so irregular, the nature of the ground varies so that we must use practically all methods, and the stope is the method of really mining the ore and getting it out and getting to the surface. That is the name of the working place for each and all of these various mining methods.

Q. What is the depth of these various shafts which you have described? A. The Junction shaft, the lowest level of the Junction shaft is the 2700 level. There is what we call a sump, which is 60 feet in depth, below that level. That provides a place for surplus water and stuff that falls and goes down in there. The cage, having two decks, a part must project down below.

In the Campbell shaft, the lowest level is the 2300 level.

*G. C. Pidgeon—For National Labor Relations Board—
Redirect.*

In the Cole, the lowest working level is the 1400 level, although it goes down in depth to another level below there,—I think it is about 50 or 60 feet,—which connects a crossing with the Briggs mine, and thence into the Junction.

The lowest level in the Sacramento is the 1840.

Trial Examiner Kennedy: Any further questions?

Mr. Kitchel: No questions.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Evans: Do you want these maps?

Mr. Persinger: I thought we might look at them a few minutes, later.

Mr. Evans: All right, you may have them later. Do you need Mr. Pidgeon any more?

Mr. Persinger: No. Thank you very much.

Trial Examiner Kennedy: One thing more, for the record: What is your position?

Mr. Pidgeon: Chief Engineer.

Mr. Persinger: Mr. Examiner, the respondent has furnished me with a considerable amount of data and payroll lists covering a period of some months, and certain other material incident to the subpoena. In addition, counsel has informed me that a large mass of material has just reached him from New York, which will require a certain amount of time to segregate.

I would suggest at this time that we take an adjournment until Saturday morning. I think that it will save time in the long run. It will give us an opportunity to analyze this material which has just come in.

Trial Examiner Kennedy: Any objection to that?

Mr. Kitchel: That is agreeable with us.

Trial Examiner Kennedy: I beg your pardon?

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Mr. Kitchel: That is agreeable with us.

Trial Examiner Kennedy: We stand at recess until 9:30 Saturday morning.

(Whereupon, at 11:25 o'clock a. m., an adjournment was taken until 9:30 o'clock a. m., Saturday, January 29, 1938.)

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and
INTERNATIONAL UNION OF MINE, MILL,
and SMELTER WORKERS, LOCAL No. 30.

CASE No.
XXI-C-266

Room 2-Cochise County Court House
Bisbee, Arizona

SATURDAY, JANUARY 29, 1938

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of Phelps Dodge Corporation, Respondents.

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PROCEEDINGS.

Trial Examiner Kennedy: The hearing will be in session.

The Reporter has called my attention to the fact that in a portion of the transcript the Campbell shaft is referred to as "Camel," incorrectly. Its proper spelling is C-a-m-p-b-e-l-l.

We understand, then, that the transcript has been corrected to show the correct spelling. Is that agreeable?

Mr. Kitchel: That is agreeable.

Mr. Persinger: That is agreeable.

Trial Examiner Kennedy: Let the record so show. Proceed.

Mr. Kitchel: Mr. Trial Examiner, may I make a motion at this time?

Trial Examiner Kennedy: Yea.

Mr. Kitchel: We assume that after Thursday's hearing the preliminaries are now over, and counsel for the National Labor Relations Board will proceed with his case. We would like, therefore, at this time to move that all witnesses who are to appear during the course of the proceedings be excluded from the courtroom.

Mr. Persinger: If the Examiner please, I do not want to take an unfair advantage of counsel. I think it only fair to point out that the Board has no witnesses in the connection in which he is using the words. All the Board's witnesses are complainants. They are parties in interest, and it would be a denial of due process to exclude any of them from the hearing at any time.

Mr. Kitchel: Well, the union is not the complainant. The National Labor Relations Board is the complainant.

Mr. Persinger: That is true, but they have a financial interest, possibly, in the order the Board may hand down.

Mr. Kitchel: As I understand it, the National Labor Relations Board is the complainant in this case, and the 48 men in the Appendix are their witnesses. Therefore, we stand

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in the same position as any witnesses that respondent might use.

Trial Examiner Kennedy: Is there anything further that you may wish to say on this motion? (No response.)

I am of the view that respondent counsel is technically correct in stating they are parties in interest.

Mr. Persinger: Excuse me. Do you mean the Board's counsel or respondent's counsel?

Trial Examiner Kennedy: Respondent's counsel. The Board's counsel has also stated a quite obvious fact, that as a result of an order of the Board that certain of the men named in the complaint may become beneficiaries.

Is there any union representative who might be a witness in this case, Mr. Persinger?

Mr. Persinger: There is no one except the actual persons named in the appendix of the complaint, and Mr. Earl Worden, who has been included by stipulation.

Trial Examiner Kennedy: Mr. Earl Worden?

Mr. Persinger: He has been included in the case by stipulation as one of the complainants.

Trial Examiner Kennedy: And he is the only one that might be taken to represent a union, is that right?

Mr. Persinger: No, I don't mean that. Strictly speaking, there is no representative of the union who will testify. There is a representative of the union present, but he won't testify.

Trial Examiner Kennedy: Well, what prejudice would result to any of the persons named in the complaint if they were excluded while the testimony as to the activities regarding other persons named in the complaint is being given?

Mr. Persinger: That I couldn't say in advance.

Mr. Kitchel: On that point, Mr. Trial Examiner, I would like to explain the basis of our motion. We feel that here we have 48 men whose testimony, I assume, will be more or less the same all the way through, and we feel it desirable, under those circumstances, with the number of men involved,

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that they appear in here not as a group but to get the facts on their individual case.

Trial Examiner Kennedy: Well, I am inclined to grant the motion of respondent's counsel, and the motion will apply to all witnesses in this case, no matter for whom they appear. The order will apply to all, either witnesses for the respondent or for the Board, and the rule will be that anyone can stay in this courtroom at any time, but if you remain in here except while you are on the witness stand you will not be permitted to testify in this hearing. After your testimony is finished, and it is so stipulated by both counsel, you may remain in the courtroom.

Do you understand, Mr. Kitchel, that that applies to your witnesses as well as the Board's?

Mr. Kitchel: Yes, Mr. Examiner.

Mr. Persinger: If the Examiner please, I offer as a final subdivision of Board's Exhibit 1, the order designating Mr. Thomas H. Kennedy as the Trial Examiner, assigned to this case on January 25, but which just reached me by mail yesterday.

(Passing document to counsel.)

Mr. Kitchel: We have no objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 1-J.

(Thereupon the document above referred to was marked as Board's Exhibit 1-J.)

Mr. Persinger: I offer as Board's Exhibit next in order the annual report of the Phelps Dodge Corporation for the year 1935, and also as Board's Exhibit next in order the annual report of the Phelps Dodge Corporation for the year 1936, both of which were furnished by respondent counsel.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: Mr. Trial Examiner, we do object to the introduction of those exhibits in evidence. They were produced under the subpoena, but we take the position that they

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have no relevancy to this proceeding as affecting an unfair labor practice, and they would not tend to create an unfair labor practice disrupting commerce.

Trial Examiner Kennedy: May I see the reports?

(The documents referred to were passed to the Trial Examiner.)

Trial Examiner Kennedy: You do not take the position that they are not properly identified?

Mr. Kitchel: Oh, no.

Trial Examiner Kennedy: Is there any objection as to their authenticity?

Mr. Kitchel: No, Mr. Trial Examiner, purely the question of relevancy.

Trial Examiner Kennedy: The objection is overruled. They will be received in evidence as Board's Exhibit 6 and Board's Exhibit 7.

(Thereupon the documents above referred to were received in evidence and marked as Board's Exhibit No. 6 and Board's Exhibit No. 7.)

(Discussion outside the record.)

Mr. Persinger: Could we take a short recess?

Trial Examiner Kennedy: Yes; a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows):

Trial Examiner Kennedy: Are you ready to proceed?

Mr. Persinger: Yes.

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Henrie, will you take the stand, please?

H. C. HENRIE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

H. C. Henrie—For National Labor Relations Board—Direct.

Trial Examiner Kennedy: What is your full name, please?

The Witness: H. C. Henrie; H-e-n-r-i-e.

Trial Examiner Kennedy: H-e-n-r-i-e?

The Witness: Correct.

Direct examination:

Q. (By Mr. Persinger) Mr. Henrie, are you employed by Phelps Dodge Corporation? A. I am.

Q. In what capacity? A. General Superintendent, Mines Division, Copper Queen Branch.

Q. How long have you held that position? A. Since January 1, 1938.

Q. How long have you been employed in the Mines Division of the Copper Queen Branch? A. Well, I have been with the company since 1909. Now, the Mines Division was not established as such until 1930, I believe. Before that it was the Copper Queen Branch.

Q. Have you been employed in the Copper Queen Branch the entire time since 1909? A. Yes, yes.

Q. What position did you hold in June or July of 1935? A. 1935? Well, I had no title. I was just an assistant to Captain Hodgson, who was Manager of the Mines Division.

Q. Are you familiar with the various official positions in the Mines Division today, and as they existed in 1935? A. I am.

Q. And are you familiar with the authority which accompanies each position? A. I am.

Q. Who at the present time has charge of employing new men or re-employing former employees? A. Mr. Joe—I don't know his initials—Berlindas; B-e-r-l-i-n-d-a-s.

Q. Who held that position about June or July, 1935? A. M. A. Bateman.

Q. Does he have full authority to determine who shall be employed and who shall not be employed? A. He does.

Q. Did Mr. Bateman have that same authority in 1935? A. He did. Let me add this: that is, he has full authority.

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Of course, you have general policy instructions, such as—well, we don't want any men hired, or hire only miners, or it might be hire only muckers or inexperienced men. But he has charge of employment, barring those general instructions.

Q. In other words, when men are needed he determines which individual shall be employed to fill those positions, is that correct? A. That is correct.

Q. Now, at the time when new employees are needed in some department— A. (Interrupting) That very largely is related to your production schedule. Naturally, the more produced the more men you would need, and, conversely. As the production schedule is cut, production is cut, I should say, less men are needed.

Q. Now, who determines the production schedule? A. The management.

Q. Do you mean the officials of the Mines Division? A. Not entirely. Your production schedule, of course, would be based—I am speaking now for the corporation.

Q. Yes. A. On the amount of copper which they figure they could sell. Then, the production would be allocated to the various branches. We would be instructed to produce so many million pounds per month until further advised.

Q. Now, who would give you those instructions? A. The General Manager of the corporation.

Q. And who is he and where is he located? A. Mr. H. M. Lavender, General Manager. He is located, his headquarters are at Douglas.

Q. And do you happen to know whether or not the instructions reach him from the New York office, or whether he confers with the officials in New York on these schedules? A. Oh, certainly; he has to.

Q. And when you receive instructions from Mr. Lavender to increase or decrease production, is the number of men to be laid off or to be employed determined solely by the management of the Mines Division? A. Yes, sir.

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Q. And then, having determined the number, the Employment Manager determines the individuals? A. Determines what?

Q. The individuals to be either laid off or employed? A. No, you might—You would, on employees; yes. On a layoff we generally work along general policy lines. Single men, short-service men, are laid off first. Then comes other service groups, single men; then, of course, in the case of a very drastic layoff it would be shorter term married men. We have always worked it that way.

Q. Is it customary for the Employment Manager, in selecting the individuals whom he is going to hire when he needs more men, to confer with other officials of the Mines Division as to which individual shall be employed? A. He would, in some cases. Now, take the case of a—oh, mechanic. Let's say a diesel engine operator. He would hardly be qualified, and in that case the man would be sent to the Master Mechanic, who would talk with him and see whether he is qualified. That might—that would apply, perhaps, to machinists and certain others.

Q. Would it apply to miners, normally? A. No.

Q. Or muckers? A. No.

Q. Or motormen? A. No.

Q. And, of course, not to the helpers? A. Oh, no.

Q. Now what—First, who has charge of the payroll? That is, making up the payroll and keeping a record of the day's employment, and the time of the men, so as to make out the pay checks? A. The Paymaster.

Q. And who is the Paymaster at present? A. Well, Mr. E. C. Hicks is Paymaster for the company. He has been quite ill for a few months. He is back at work now, but we would say that he is Paymaster.

Q. You say "for the company." You mean just the Mines Division? A. Just the Mines division; that is all we handle.

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Q. Now, who was paymaster as of June or July, 1935?

A. I believe Mr. Hicks was; in fact, I am quite certain Mr. Hicks was Paymaster at that time.

Q. Now, what employment records are kept on each individual employee? A. Well, you have a record of—well, what we term the "Employee's Service Record Card." There are quite a few things on there. It is a card—I believe you have one in your hand there. I could identify that and save time.

Mr. Persinger: I will offer this card for identification as Board's Exhibit next in order.

Trial Examiner Kennedy: What number will that take, Mr. Reporter?

The Reporter: Board's Exhibit 8.

The Witness: That is what we term the service card.

Trial Examiner Kennedy: Repeat it for the record, please.

The Witness: That is the service record card.

(Thereupon the document above referred to was marked as Board's Exhibit No. 8 for Identification.)

Q. Now, are you familiar with the symbols used to indicate different matters on this card? A. Oh, I think I am.

Q. This card represents the record of what individual?

A. Tom Abedin; A-b-e-d-i-n.

Q. Following his name appear two numbers: 1190 and 1014. What do they mean? A. That is his payroll number; check number.

Q. Is that number given a man when he is first employed by the company? A. It is.

Q. Is it ever changed thereafter? A. It is.

Q. On what occasions is it changed? A. Each operating division or department of the mine has a block of numbers. To illustrate: One division, we would say, would start at 1, and perhaps at 600. The next division would

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pick up at 800 and perhaps run to 1500, and so on until every department was covered.

Q. I see. Below his name appears "Previous Record," and 11/16/25. What does that mean? A. I would read that, that this man was employed November 16, 1925, and has been on the payroll since that date. Now, let me modify that.

Q. Surely. A. He may have left, perhaps been away for two or three months, and then back again.

Q. Below that appears "9½ years service, with C. & A. prior to merger." A. That was service of this man with the C. & A. Mining Company. There was a merger between the Phelps Dodge Corporation and the Calumet & Arizona Mining Company, and I think it was October, 1930, although I may be off there. It may be 1931. I would have to check that date.

Q. That is all right.

Below that appear a number of columns, the first headed "Date," and under "Date" the first date is 11/18/31. Following that, the column "Employment Record," and the word "Re. Inst"; following that, the column marked "Occupation," and under that the word "Miner," and then a column marked "Number," and under that "1190"; a column marked "Boss," and under that "Fisher"; a column marked "Remarks," and under that "Request of Lavender," and then two blank columns.

Now, will you interpret that line?

A. I would read that this way: On November 18, 1931, the man was reinstated, which leaves the inference that he had been out of service. He was reinstated to the occupation of miner. 1190 was the payroll number given him. Fisher was the boss.

Q. Does that mean shift boss or foreman? A. Well, I would say in this case that means foreman.

Q. Foreman? A. And at request of Lavender, that would seem to indicate that Mr. Lavender, who is Superin-

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tendent at that time, had requested that this man be reinstated. He probably rustled Lavender for a job.

Q. Judging by that date, November 18, 1931, could that have been merely formal reinstatement in view of the fact that the merger may have been about October 31st? A. He may have been laid off then, you see. I haven't got the information here, and then reinstated. There was quite a lay-off at that time.

Q. I see. Will you interpret the next line below that? A. On March 8, 1932, evidently this man was discharged by Fisher on account of a reduction in force.

Q. That "R. F." under "Remarks" means "Reduction of Force"? A. Yes.

Q. Then under "Character of Service," the following column, is "stopping and clean-up." Does that mean the actual work that he performed? A. At the time he was laid off he was evidently stoper miner and on clean-up work, and Sharp was his shift boss.

Q. I see. The bosses listed under the final column, then, are shift bosses? A. It is in this record. I don't know whether that would be true of all of them.

Q. It would not necessarily be true of all of them? A. I don't know.

Q. What would the next line mean? A. Well, then, on February 13, 1934, he was reemployed again as a miner, given the payroll number of 1514, sent to Mr. Fisher, foreman, at the request of Fisher.

Q. And then the final line? A. On June 10, 1935, he quit the service of the company. He was a miner, payroll number 1014; Marshall was his foreman. Remarks: Walked out when strike was called; picketed all during strike."

Q. The lower half of the same face of this card is headed: "Record of absence." On the first block under the year 1932 appear the figures, "86," and "8." Can you tell me what they mean? A. I would read that opposite the month of January, "8," and "6,"—not "86," meaning that

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the man worked 8 days in the first half and 6 in the second half of the month. That is, our periods run from the 1st to the 15th, inclusive, and from the 16th until the end of the month. I would read that, "8 days work in the first half and 6 days in the second."

Q. And opposite the month "February," the figure would indicate "8 days missed during the first half," is that correct? A. Yes—No, I would say worked.

Q. Oh, 8 days worked? A. Yes.

Mr. Persinger: Off the record for a moment.
(Discussion outside the record.)

Q. (By Mr. Persinger) Now,—

Trial Examiner Kennedy: On the record. Whenever you gentlemen want to go off the record, address your request to the Chair, please.

Q. (By Mr. Persinger) Now, on the reverse side of this card I think the meaning is clear until we reach the lower portion marked "Accident Record." Now, following that, in the same line, appears: "10/17/34—FAC—#1739." Can you tell me what that means? A. My answer to that would be that that must be the man's Social Security number, although I don't know whether we had registration in '34 or not.

Q. Well, I should ask that, then, of the employment agent? A. The Employment Manager.

Q. Now, below that there is a column headed, "Honor Roll Record," and the first line in that column is: "4/1/32 Sixth Year." Now, what does that indicate? A. I would read that as meaning that the man has worked 6 years without a lost time accident.

Q. And the line below that? A. Well, he must have had an accident of some nature in there because this line says: "Less than 1 year," and it is 2 years later, you see.

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Q. So that by '33 he probably had an accident? A. And started over again, or he may have left the service.

Q. I see. And the final line: "4/1/35—First Year." A. Well, he has completed, let us say, the second cycle, a full year, without a lost time accident on 4/1/35.

Q. Now, what significance, if any, does such an honor roll record have, in the opinion of the company, as to the ability of the man or his efficiency and safety? A. It is purely a safety record notation. It comes about this way: In the effort to enlist the cooperation of employees in safety work, some years ago a system was established whereby men who worked a year without a lost time accident would receive an award, termed a "safety award." Then, if they went two years, there was another award. Then three years another award, and so on up the scale.

Q. And is that considered a matter of importance by the company? A. Yes. We endeavor to eliminate all the accidents we can, and we want the employees' cooperation in the work.

Q. Well, to put it another way, would the company consider that a man was not a desirable employee if his accident record were bad, if he had many accidents? A. That would depend, of course, on the nature and the kind of circumstances surrounding the accident. Many accidents are not the man's own fault.

Mr. Persinger: I offer that card marked for identification as Board's Exhibit next in order in evidence.

Trial Examiner Kennedy: You offer it in evidence? Have you presented it to respondent's counsel?

Mr. Persinger: Counsel has seen it.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 8.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 8.)

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Q. (By Mr. Persinger) Now, what other records of employment are there, Mr. Henrie? A. Well, there is a record of physical examination, which is made by the examining physician.

Q. Any others? A. (No response.)

Q. Is there any record of a man's efficiency rating, or do you have anything of that sort? A. When a man leaves the service of the company, he gets a slip from the boss signed by the foreman. One-half of this slip is a time record, which is signed by the employment agent, and the man presents that at the office so that the Paymaster can get the last shift worked and make out his time. The other half of the slip is labeled: "Character of Service." That slip would indicate the work the man was employed on, perhaps the remarks "Good," "Average," and "Poor," or whatever notation of that nature the boss might make.

Q. Now, who has charge of the employment records such as Board's Exhibit 8, and of these time records and character of service records? A. The employment agent has charge of all those records.

Q. And he did have, in July, 1935—— A. Well, we had a Mr. Bateman; of course, he had charge in 1935, and Mr. Berlinds, oh, say, in the last six months, perhaps a little longer.

Q. Now, how are time records kept? A. It is the time card system. A man—an employee going on shift in the morning receives a card and number. And on this card is indicated his wage rate and a place for the segregation of his time. Then these cards are signed or okayed, I should say, by the boss, some time during or at the end of the shift. The cards then go to the payroll department. They serve as a record of time worked; also a segregation of the man's time to certain accounts.

Q. Does the man also fill out his card? A. He is supposed to.

Q. And under whose jurisdiction are these time cards? A. The chief clerk and paymaster.

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Q. Is that one position, chief clerk and paymaster? A. No, sir.

Q. Two different clerks? A. No, the paymaster, of course, is the man in charge of all time cards and payroll.

Q. And the chief clerk is under the paymaster? A. No, over him.

Q. Over the paymaster? A. Yes.

Q. Do you know who made up the various lists of employees which were submitted in answer to the subpoena? A. Mr. Bateman.

Q. Now, when there is to be a transfer from one shaft to another, who has charge of directing such transfers? A. I would say there is no set rule. Transfers would come about like this: The foreman of one shaft may be starting some new work or, perhaps, increasing operations at that shaft. He would take the matter up with the general foreman, telling him he needed additional men, would like to have, for instance, four miners, five muckers, or he may be doing some special work like, oh, repairing the shaft, in which case he, of course, would ask for shaft repairmen.

Q. And whom would he ask? A. The general foreman.

Q. Who is the general foreman? A. We have two, Mr. Jack Fisher and Mr. Roy Walton.

Q. I believe Mr. Walton was foreman at the Sacramento shaft? A. And Porphyry Divisions.

Q. Mr. Fisher of the other shafts? A. Yes; Junction, Campbell and Cole shafts.

Q. To take a specific instance, when the Cole shaft was first opened some years ago and, necessarily, you have to move a large body of men into it, who determined which men would be transferred? A. Well, the history of the Cole shaft was something like this: The first job there was repairing the shaft, as I recall. No doubt, the Mines Superintendent selected Mr. Rattery, who was an old boss. Then between Mr. Fisher and Mr. Lavender, no doubt, they selected two or three shaft repairmen and placed Rattery in

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charge of the job. Then the natural sequence from there would be, as repair work progressed, the repair of certain drifts, clean-up. No doubt, they would ask for—Mr. Battery would ask then Mr. Fisher for drift repairmen—repair miners. Then you get to the point where, possibly, production started. Then he would want miners and muckers. He would make this request to Mr. Fisher, general foreman, who, in turn, would see his other foremen and say, They want so many miners, so many muckers at the Cole.

Q. And the other foremen then would select among the men any men working under them to go over to the Cole?
A. Yes, except in the case of what we might term, oh, "specialists"—that is a poor word. But, oh, shaft repairman, or certain individual miners as repairmen. No doubt, Mr. Fisher would dictate pretty much on that small group who would be sent.

Q. Who has authority to grant pay increases? A. Are you speaking of salary or hourly rates?

Q. Hourly rates. A. The hourly wage rates are fixed. If a man is employed as a miner and doing miner's work, he automatically takes the rate.

Q. How would a man move from miner to a job which would pay a higher rate? A. Well, let's put it this way, if I may: A man starts as a mucker, promoted to miner.

Q. Who promotes him? A. The foreman on recommendation, no doubt, of the shift boss. In other words, he just changes the man's classification and rate. The rate is already established—changes his rate to the miner's rate, and changes his occupation to miner.

Q. Customarily when a man is discharged, who recommends that discharge? A. Either the foreman or the shift boss; generally the shift boss.

Q. Who has final say? A. Well, the foreman, of course. If the man feels that he is getting a little the worst of it, he will discuss his case with the employment agent; or, if it looks as though the man really has something to kick

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about, the employment agent would then discuss the case with the foreman and the general foreman, and the outcome of all that would be that the man would be given another chance, or else the discharge would stick. Sometimes the men go farther up the line and the management investigates the case. They would, particularly if he was a long-service employee.

Q. Is the same true in the case of lay-offs, that they are recommended by the shift boss or the foreman, other than the general policy which you have already mentioned?
A. (Pause).

Q. Let me put it a different way: The general policy, first, is to lay off men of short service. Suppose there are a hundred men of short service and you want to lay off 50. Who recommends which 50 will be laid off? A. Well, you can generally get your 50 by splitting down the months, you see.

Q. I see. A. I might add to that, also, that in connection with lay-offs there have been times when, oh, you might say, the foreman turned in a list of what they term "weak sisters"; nothing perhaps that would warrant a man being discharged for, but you always have men who are not as efficient as some others. But the general policy on lay-offs is along the line I mentioned.

Q. What, exactly, is the distinction between a lay-off and a discharge? A. Well, a discharge, in my mind, is discharge for cause; a man not doing enough work, breaking some rule or committing some act which he should be discharged for.

Lay-off, you would have two classes in the lay-off: One group, as I just mentioned, whose work may not be up to that of better workmen; and, secondly, just an arbitrary lay-off because you haven't got enough jobs for the men.

Q. Would the payroll employment records show a distinction between those two classes of lay-offs which you have mentioned? A. I doubt it.

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Q. In other words, in Board's Exhibit No. 8 there is a notation "R. F.," which you said means "Reduction in Force." A. Yes.

Q. Now, that could either be a lay-off following the general policy because the man happens to come in that group which is first to be laid off, or it could be a lay-off on the recommendation of the shift boss, that he was not one of his better workmen? A. Correct.

Q. And there is no way of reading the card which it would be? A. At least I couldn't. Perhaps the employment agent could tell you, remembering the case, or something like that.

Q. I see. Is a man dropped from the payroll when he is laid off, or does his name continue to be listed on the payroll each week? A. A man is technically dropped from the payroll the minute we receive notice from the boss that John Smith has been laid off or discharged.

Q. A man, then, can be laid off without the paymaster or chief clerk knowing anything about it until the formal report comes through to him? A. Yes, but that shouldn't be over a couple of days.

Q. I see. Normally do those reports come through to the General Manager of the Mines Division? A. No.

Q. In this case, yourself? A. That is, we do get a report each 10 days showing the number of men on the payroll in the various departments, the number of entrances and the number of terminations during the month, and at certain times, principally when you are reducing the force in order to just keep us up to date, we might get certain reports at more frequent intervals—in other words, to see how fast a lay-off is progressing and how fast we are getting to a given point.

Q. By the way, what was the total number of employees at your last report? A. January 1st, total number of employees, all departments, Mines Division, 1414 men, I believe; very close; within a man or two.

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Q. Normally, in case a man is discharged, is the same procedure in regard to the records followed as in the case of a lay-off, namely, that the chief clerk and paymaster may not know about it until a day or two after the actual discharge had occurred? A. I would say so. Generally, the man goes up and gets his money as quick as he can. In that case, they would know it in a few hours.

Q. By the way, what are the regular paydays? A. Two a month: On the 6th of the month and the 21st of the month, unless holidays or something interfere.

Q. And the paydays were the same in June and July of 1935? A. Yes.

Mr. Persinger: I believe that is all, Mr. Henrie. I am very much obliged to you.

Mr. Kitchel: Might I ask Mr. Henrie a few questions just to clear up?

Trial Examiner Kennedy: Yes.

Cross Examination.

Q. (By Mr. Kitchel) Mr. Henrie, in answer to the question of who prepared the records that were submitted to counsel under the subpoena, as I recall it, your reply was "Mr. Bateman." Did anyone assist Mr. Bateman in that preparation? A. Oh, yes. Mr. Belindas worked with him. Perhaps I should have said, they were prepared jointly by Mr. Bateman and Mr. Belindas.

Q. In answer to counsel's question, you gave your recollection as to the last payroll count. Has there been a reduction in force over the last few months, Mr. Henrie? A. There has.

Q. When, approximately, did that reduction start? A. Oh, I would say October 1st.

Q. What has been the general rule as to hiring men since that date? A. Oh, we issued positive orders that no men were to be employed.

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Mr. Kitchel: That is all, I believe.

Mr. Persinger: I have just one more question.

Q. (By Mr. Persinger) Who is the chief clerk? A. Mr. L. T. Buell.

Q. And was he chief clerk in June and July of 1935?

A. He was.

Mr. Persinger: That is all.

Mr. Kitchel: Mr. Trial Examiner, may I ask that counsel extend Mr. Henrie this courtesy: He is pretty busy with his job, and is underground at various times during the day. If counsel will want him at other times for additional information, I would ask that he give us some notice in advance.

Mr. Persinger: We will be glad to.

Trial Examiner Kennedy: You are not excusing him permanently, then?

Mr. Persinger: So far as I know at present, we are excusing him permanently. But we will not need him further at the present time.

Trial Examiner Kennedy: You will recall him, then?

Mr. Persinger: Yes, if we need him.

Trial Examiner Kennedy: You are now excused. (Witness excused.)

Mr. Persinger: Call Mr. Day.

W. M. DAY, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: W. M. Day.

Direct Examination.

Q. (By Mr. Persinger) Mr. Day, were you formerly employed by the Phelps Dodge Corporation? A. I was.

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Q. When were you first employed by that company?

A. I were employed April 18, in '29, at the Junction, by the C & A.

Q. And, after the merger, did you continue at the Junction shaft under the Phelps Dodge Corporation? A. For the time being; then, I was transferred to the Campbell shaft.

Q. And did you continue to work in the Campbell shaft for the rest of your service with Phelps Dodge? A. No, sir; I worked at the Campbell shaft until the latter part of April of '35.

Q. And where did you work after that? A. At the Cole shaft.

Q. And when was your employment with the company terminated? A. June 6th, of '35.

Q. And just what were the circumstances under which it was terminated on June 6, 1935? A. I was discharged.

Q. By whom? A. By the mine foreman, by the name of Mr. Ratteree.

Q. What time of day were you discharged? A. Coming off the shift.

Q. What shift did you work? A. I worked day shift.

Q. And what time did you come off shift? A. 4:00 o'clock, I believe.

Q. Was anyone present at the time of your discharge, other than yourself and Mr. Ratteree? A. Well, a cage load of men got off at the same time I did.

Q. Where was Mr. Ratteree? A. He was standing in front of the cage.

Q. And what did he do and what did he say? A. He handed me a card, and I asked him what it was, and he said, "I don't know."

Q. And was anything further said by either of you? A. Nothing at that time. I taken the card and went on to the change room.

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Q. And after you left the change room what did you do with the card, if anything? A. I came back out and went and seen Mr. Ratteree after coming out of the change room.

Q. Where did you find him? A. I found him out in the yard.

Q. Was anyone else present at that time? A. No, I don't believe there was.

Q. And what was said at that time? A. I asked him what this meant. I didn't know what it meant, myself.

Q. What did he say? A. He says, "It's just a card that recommends a discharge, is all I know."

Q. Was anything further said by either of you? A. No. I turns and went back to my car and drove over to the mine office at the Junction shaft, near the Junction shaft. And I went in Mr. Bateman's office, the employment agent, and I says, "I have a peculiar card here."

Q. Wait a moment. Did you speak to Mr. Bateman himself? A. Yes.

Q. And was he in the office? A. Yes.

Q. Was anyone else present? A. No one else in the office.

Q. And what did you say to him? A. I says, "I have a peculiar card here and I don't understand what it is." He says, "Yes, you are fired."

I says, "Well, I cannot find out what it's all about. Are you man enough to tell me what I am fired for?"

He says, "Yes; it's through intimidation."

Q. Did he say what he meant by that? A. No, he didn't.

Q. Did you ask him what he meant? A. No, I didn't.

Q. Was anything further said by either of you? A. There wasn't another word spoke. He taken that card and went into another room, and in a moment he came back out with my time slip.

Q. And what did you do? Did he give the time slip to you? A. Yes.

Q. And what did you do with it? A. I kept it approximately a week and came up to the office and drew my time.

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Q. Are you a member of the International Union of Mine, Mill and Smelter Workers, Local No. 30? A. Yes.

Q. How long have you been a member? A. Since September, 1934.

Q. You were a member, then, at the time of this discharge? A. Yes.

Q. Have you been a member continuously since then? A. Yes, sir.

Q. Did you report to your union that you had been discharged? A. I did.

Q. Did the union take any action? A. Yes, sir.

Q. Were you present when that action was taken? A. Yes, sir.

Q. When was it taken? A. It was taken the following night, the night of the next day.

Q. That would be June 7th? A. Yes, sir.

Q. Do you remember what day of the week that was? A. That was on Friday.

Q. And what action was taken at that time? A. We called a mass meeting.

Q. Do you remember who called the meeting? A. It were called by the President, the Vice-President, and the Secretary.

Q. And who were they? A. Earl Morrison, was President, and Henry Hanson was Vice-President, A. W. Potter was Secretary.

Q. And what took place at the general meeting? A. We held a strike vote.

Q. Do you mean a vote was taken as to whether or not to strike? A. Yes, sir.

Q. How was that vote taken? A. It was taken on the usual form of a blank paper, and you write "strike" or "not strike."

Q. And do you know the outcome of that vote? A. Yes, sir.

Q. How did it come out? A. Almost unanimous.

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Q. For what? A. Strike.

Q. Strike? A. Yes, sir.

Q. And was a strike actually called? A. Yes, it was.

Q. When did it become effective? A. It became effective at 7:00 o'clock Monday morning, June 10.

Q. And was any picket line established at that time? A. There was.

Q. Were you on the picket line? A. Yes, sir.

Q. Thereafter, do you know of your own knowledge how long the picket line remained on duty? A. The picket line remained on duty continuously from then until August 24th of the same year.

Q. By "continuously," do you mean all 24 hours of the day? A. Not 24 hours of the day all the time, but a part of the time was 24—not 24 hours; I would say approximately.

Q. Was there, to your knowledge, a picket line substantially every day during that period from June 10th to August 24th? A. Every day the mine worked.

Q. That is, there was no picket line on Sundays or holidays? A. No,—with the exception of one or two days, there would be pickets there.

Trial Examiner Kennedy: Just a moment. There is no smoking permitted during the session. Proceed.

Mr. Persinger: Will you read the answer? I didn't get it.

(Whereupon the answer was read by the Reporter as set forth above.)

Q. (By Mr. Persinger) To refer back to the time of the strike vote: Was any discussion had at that meeting as to why the strike vote should be taken? A. There was.

Q. Who discussed it? A. Different ones discussed it; I couldn't recall the names.

Q. The names of any of them? A. Myself, for one, was namely—

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Q. And what was the gist of those discussions, if you remember?—A. That the time had come that something had to be done immediately. We couldn't stand for this slaughter, was the words that was brought up. They are canning men in groups, and it was a matter of a very few days until all union men would go in the same manner.

Q. You say "men were canned or fired in groups." Were others fired the same day that you were? A. There was six others present at that time that was fired, three others were coming off shift and four were going—three were going on, I would say. One of the men that they had the time slip for was off sick.

Q. Do you know all of those men who were fired that day?

A. Yes.

Q. Were all of them union men? A. Yes, sir.

Q. Do you remember their names? A. Jack Connett was the one that was off sick. Vivian Crandall and Levi Crandall—John Lutcavich, Art Hall, and one of the boys by the name of Hawkins.

Mr. Persinger: Did the Reporter get those names?
(Discussion outside the record.)

Q. (By Mr. Persinger) When was it you said you were transferred originally from the—to the Cole shaft? A. It was about the last of April.

Q. And prior to that time you worked at the Campbell?
A. Yes, sir.

Q. And what was your salary classification, and what rate were you receiving at the Campbell? A. \$5.24.

Q. And what was that classification, what was your job?
A. I was motorman.

Q. And was any change made in your job or your rate of pay when you were transferred to Cole? A. They rated me back as a mucker.

Q. And what did that pay at that time? A. I don't remember what mucker's pay was, but it's easily translated

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there. Motorman was 24 cents more than a miner and the mucker was, I believe, 40 cents less than a miner.

Trial Examiner Kennedy: Forty cents an hour less?

The Witness: On the day.

Trial Examiner Kennedy: Forty cents a day less?

The Witness: Yes.

Trial Examiner Kennedy: And that \$5.24 you mentioned was \$5.24 a day, is that right?

The Witness: Yes, \$5.24, and the mucker's rate was around 60 cents less on the day.

Q. (By Mr. Persinger) Did you make any complaint about that reduction? A. Yes, I went and seen Bateman about it.

Q. Where did you see Mr. Bateman? A. He was in the Copper Queen Hotel.

Q. Was anyone present besides the two of you? A. No, there was no one. I believe there was some stranger there, I don't know who it was, some other one was with Bateman.

Q. What was said? A. I asked him, Why they had cut my rating back to mucker's pay if I worked there all these number of years and built up to a higher wage?

He said, "Well, I don't know, but," he said, "we'll fix that up."

Q. Was it fixed up? A. Yes, they straightened that out.

Q. Was anything further said? A. I said, "It is hard to understand why you men would be discriminating against me, and you send me over there to the Cole shaft and we realize what that means and," I says, "I have never taken no active part in this organization against the company."

Q. What organization did you refer to? A. The Miners' Union.

He replied—he said, "What about that speech you made at the hall last Sunday?"

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I said, "Well, that was not on the company property."

Trial Examiner Kennedy: Who was this that you were conferring with?

The Witness: Mr. Bateman.

Q. (By Mr. Persinger) Was anything further said? A. No, that was about all that was said at that particular time, as I recall. We talked along there for possible 30 minutes. We had a little socialism together.

Q. Now, following the beginning of the strike on June 10th, you have already stated you were on the picket line substantially every day thereafter until August 24th. At any time during that period did you individually, or as a representative, apply for your job back, or the jobs for anyone else? A. I did.

Q. When? A. The first time I applied was on or about the 21st of August.

Q. What were the circumstances surrounding that application? Where did it take place? A. At the employment office.

Q. Inside or outside? A. Outside.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where was he standing? A. He was standing on the platform in front of his office.

Q. Was anyone outside with you at that time? A. Yes, there was a number of men with me.

Q. Were there any of your fellow-pickets? A. Yes, I would say 25 or 30.

Q. Were there any other persons who were not members of the union, to your knowledge? A. Yes, there was that many, or more, outsiders.

Q. Were you present when Mr. Bateman came out of his office onto this platform? A. Yes, sir.

Q. What did he do and say when he came out? A. He walked out, as usual, on this platform. He did that every morning, looked the crowd over, and he said, "Is there any miners here?"

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Q. Now, just a moment. You said he did that "as usual." Why would he come out and look over the crowd? Do you know? In other words, what type of a crowd was it? What was their purpose in being there, if you know it? A. Well, there was fellows up there rustling, mostly high school kids.

Q. What do you mean by "rustling"? A. Seeking employment.

Q. I see. To come back to August 21st, there was a crowd composed practically of persons looking for employment and partly pickets, is that correct? A. Yes, sir.

Q. And Mr. Bateman, you say, came out onto the platform and said what? A. He said, "Is there any miners here?"

Q. Did anyone reply? A. I was the first man that spoke up. I says, "Yes, quite a bunch of us. How about a job?" He says, "Nothing doing."

Irving Caldwell was standing by the side of me. He was a miner; he was a striker.

He says, "What about my job?"

And from that it was repeated on up. They was kind of in a line on the outside of the young kids there. We call them "rustlers."

Q. In other words, the crowd was of two groups: The rustlers close to the porch, and the pickets behind them away from the porch? A. The pickets were on outside of the crowd that come up there to rustle.

Q. I see. A. What you might say, in the same group. However, they were closest.

Q. And others called out, "What about my job?" A. A good many others called and says, "What about my job?" It was repeated right on around.

Q. Did Mr. Bateman make any reply? A. He says—shook his head. He says, "There's nothing doing." He says, "You fellows will never work for the Phelps Dodge Company again."

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I says, "Wait a minute! Now, just who do you refer to as 'You fellows'?"

He turns back to me and he says, "You strikers."

Q. Was anything further said? A. Yes.

I said, "Well, you must have told I. V. Pruitt that. He has informed two or three times the boys that we could never go to work again."

Q. Did Mr. Bateman make any reply? A. He said, "I never told Pruitt that, but," he says, "I'm telling you," just in about that tone of voice.

Q. Was anything else said? A. Well, there was nothing else said. Of course, there were small remarks, naturally, that I couldn't recall from the boys, but he went to pick them out.

He says, "You come in here."

He would stand and look around.

He says, "You come in. You come in."

Q. You mean, he would point each time? A. He would point that way. (Illustrating) He would point to a certain individual. He called 10 or 11 kids in the office, and some of them that he called in went to work that afternoon with their hard-boiled hats and their shoes under their arms.

Q. Did you know any of them by name? A. No, I didn't know the kids.

Q. Did you at any time after August 21st apply to Mr. Bateman or any other official of the company, either by yourself or with others, for reinstatement or re-employment for yourself or for any of the other strikers? A. Yes.

Q. When? A. On or about the 23 of August.

Q. That would be about two days later? A. Yes.

Q. Who was with you, if anyone? A. A. B. Porter.

Q. Was he a member of the union? A. Yes, sir.

Q. Did he hold any official position? A. He was Secretary.

Q. Anyone else? A. P. C. Lytle.

Q. Was he a member of the union? A. Yes, sir.

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Q. Did he hold any official position? A. He had all the way through up until about a week before the strike was called. He was Treasurer.

Q. But at this particular time on August 23rd he was not an officer? A. He was not, no.

Q. Anyone else? A. That was all.

Q. The three of you? A. Yes, at that time.

Q. And to whom did you call on? A. We called on Mr. Pat Henrie.

Q. Where? A. At his office.

Q. Was there anyone else present? A. Mr. Barkdoll.

Q. Was anyone else present? A. No one else.

Q. Do you know what position Mr. Barkdoll held at that time? A. He was General Manager of the Mines Division of the Phelps-Dodge.

Q. What was said when you called on Mr. Henrie and Mr. Barkdoll? A. We went in. I had made the arrangements by telephone a couple of hours before—approximately that much—to meet with Mr. Henrie, and when we went up there he invited us to come on right up.

We went in, and Mr. Barkdoll was there. He says, "Come right in, gentlemen. Take a seat there."

He says, "What was you wanting to see me about?"

Mr. Lytle spoke up and said, "Mr. Day has called the conference and," he said, "he's the spokesman and he'll do the talking."

I said, "We merely come up to talk things over and see if there was any chance of getting together and settling this labor dispute, or what the chances was"—what they are—"for these men going back to work."

And they sit there waiting for something else, and I said, "I want to ask you men a question: Do you want those miners to go back to work and operate your mine with miners, or do you want to turn them out now and operate your mine with inexperienced men and floaters?" I says, "The proposition is now up to you."

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Well, Mr. Henrie asked me some distant questions that I might not recall all of it, and he did say, "Isn't it the fact that the men down there at the Bisbee Miners' Union were talking among themselves as to whether they was a'going to run this outfit, or whether we were going to run it?"

I said, "I never heard such a thing remarked." I said, "But, I believe you should at least grant us a hearing, unless condemn the men who violated the company rules and we are as keen to have them fired off of the job as you are, and the men who are not guilty of any violation of that kind go back to work."

He said, "We are satisfied with it the way it is. There will be no hearing."

Trial Examiner Kennedy: Who said that, Henrie?

The Witness: Yes, sir.

Q. (By Mr. Persinger) When was the strike finally called off? A. They called it off the 24th of August.

Q. Do you know who actually called it off? A. The members.

Q. And since that time have you personally applied to any official of the company for reinstatement or re-employment? A. Yes, sir.

Q. When was the first time after August 24th that you applied? A. Well, some time in December.

Q. To whom did you apply? A. Mr. Barkdoll.

Q. Where did you see Mr. Barkdoll? A. I run onto Mr. Barkdoll as he was getting in his car, parked down by the P. D. Building—the store building.

Q. That is, in the town of Bisbee? A. Yes, sir.

Q. Was anyone else present in the car with him? A. No one with him; no one with me.

Q. What was said? A. I walked up to the car as he was getting in. I just happened to be passing by there, and I think it was a good time to say something to him, and I says, "Hello, Mr. Barkdoll."

He turned around; he didn't recognize me.

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He said, "Hello."

I says, "Well, are you employing any men now at the mine?"

"Oh, yes," he says, "quite a few."

I said, "How's chances of going to work?"

He said, "Did you ever work for the company before?"

"Oh, yes," I said, "I put in five or six years."

He said, "What's your name?"

I said, "Day is my name."

He said, "Oh, yes, I remember you now." He said, "You was up to the office to see us one day."

I said, "Yes, sir; I am the man."

"Well," he said, "I don't know, Mr. Day. Have you rustled Mr. Bateman?"

I said, "No, not in quite a while."

He said, "I don't know what to say to you about it, but," he says, "have you seen Pat Henrie?"

I says, "Not since the time I saw you and him together."

"Well," he said, "I would like to give you a job. In facts," he says, "I would like to have all of you boys put back to work; but I have no jurisdiction over that." He says, "That is entirely up to Pat Henrie."

Q. Was anything further said? A. Nothing else. I turned and walked away.

Q. Have you applied for work any time since then? A. I did.

Q. When? A. The 8th day of last December.

Q. You mean, December of '37? A. Yes.

Q. To whom did you apply? A. Mr. Belindas.

Q. Where? A. At his office down in front of the Junction shaft.

Q. What time of day was it? A. About 3:15 in the afternoon.

Q. Was anyone present? A. No. We was by ourselves.

Q. What was said? A. I asked him, "How about a job?"

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He said, "Nothing doing." He said, "We are not hiring anyone now." He said, "What's your name?"

And I told him.

He said, "Do you live here?"

I says, "Yes." I says, "I live in Bisbee."

"How long have you been here?"

I says, "I have been here since 1929."

"That's funny," he says. "I don't know you, and you have been here that long!"

"Well," he says, "did you ever work for the company before?"

I says, "Yes, I worked quite a few years for the company." I says, "I know that you have got my record and there is no use in going into any delay or anything of that kind. I have worked here and we had a little trouble here in 1935, and I come out on strike."

I says, "Of course, you have that record and I have not been able to get back to work, but," I says, "do you fellows aim to hold that against me?"

"Well," he says, "I don't know whether we do or not."

But he didn't tell me to come back.

Q. Have you been back since? A. No.

Mr. Persinger: Take the witness.

Excuse me, Counsel. Could we take a short recess for about 5 minutes?

Trial Examiner Kennedy: We will take a 5-minute recess.

(Whereupon a short recess was taken.)

Trial Examiner Kennedy: The hearing will be in session.

Cross Examination.

Q. (By Mr. Kitchel) Mr. Day, were you employed by the Mines Division of Phelps-Dodge Corporation on June 10, 1935? A. No, sir.

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Q. You stated in your testimony that in April, 1935, you were transferred to the Cole shaft from the Campbell shaft; is that correct? A. Yes, sir.

Q. And you have stated that at that time you received a reduction in rate; is that correct? A. They gave me the slip specifying the reduction.

Q. Isn't it true that that mistake was promptly corrected? A. It was corrected; yes.

Q. Was there anything different in the working conditions at the Cole shaft than they were at the Campbell shaft? A. In the working conditions, did you say?

Q. Yes. A. Yes, there was quite a difference.

Q. In what respect? A. They were really better at the Cole shaft.

Q. Are you at present an officer of Local No. 30? A. Yes, sir.

Q. Have you with you, or can you produce for us, the by-laws and constitution of that organization? A. Not at the present time.

Q. Is there anyone in the courtroom, do you know, that would have that?

Mr. Persinger: They could be produced.

The Witness: I don't have them with me.

Mr. Kitchel: Could we ask that those be produced as soon as possible, Mr. Trial Examiner?

Trial Examiner Kennedy: Well, can you stipulate with counsel for the Board on that?

Mr. Persinger: May we have this off the record?

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Mr. Persinger: I will be glad to furnish them to counsel this afternoon.

Mr. Kitchel: And could you include in that, Mr. Persinger, the by-laws of the International?

Mr. Persinger: Yes.

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Q. (By Mr. Kitchel) Now, with reference, Mr. Day, to your testimony as to making application for employment since June 10, 1935. You testified, I believe, that your first application was made on August 21, 1935; is that correct? A. On or about that date.

Q. Were you at that time in the picket line? A. I was.

Q. Will you tell the Trial Examiner how these groups were arranged, again, outside the Employment Office on that date? A. The groups was arranged, the outsiders who came in, of course, grouped up as they took the stand as close as they could get up to the employment agent's door. We came up and we got right in line with them, a group about the same space as this room here, and when we got up there these boys was all gathered up close, and we followed right in behind them.

Q. How many would you say there were in the first group that were up close? A. Well, I would estimate that 25 to 35 were.

Q. Were all the men in your group who closed in behind them engaged in picketing that day? A. Yes.

Q. What time of day was it? A. Right after 7:00 o'clock in the morning.

Q. Had the shift gone on? A. The shift had done gone.

Q. How long before? A. Possibly 10 or 15 minutes. The whistle had blown.

Q. Had all the other men coming off shift disappeared at that time? A. No one came off at that hour that I remember of.

Q. You were then actually engaged in active picketing that morning, were you not? A. We was.

Q. Isn't it true, Mr. Day, that you were not applying for employment; you were merely heckling this group that were rustling there and Mr. Bateman? A. We were applying for our jobs back for a reason.

Q. Do you consider that standing in a picket line and yelling at the employment agent was an application for em-

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ployment? A. There was no yelling at that particular time that I remember of.

Q. Well, do you consider that standing in the picket line and calling out to the employment agent is an application for employment? A. Yes.

Q. Were you engaged in picketing, or were you engaged in applying for employment? A. In applying for employment, that morning.

Q. Was the strike over? A. No, sir.

Q. Was the picket line through with its duties? A. Yes, sir.

Q. You stated, I believe, that later on that morning Mr. Bateman called in certain men? A. Yes, sir.

Q. To his office? A. Yes, sir.

Q. How long did you remain after that? A. Well, not longer than 30 minutes.

Q. Did you see these men who apparently were given employment come out and start on their way to work? A. No, not at that particular time.

Q. Well, you stated, I believe, that they came out with hard hats and shoes under their arms? A. That would be in the afternoon.

Q. Had you been there all day? A. No, we were not there all day. We went back during the time that the shift was going on and coming off in the afternoon.

Q. During the course of the time when the picket lines were established, Mr. Day, is it not true that every morning when the shift had gone on, and the picketing was more or less disbanded, that the picket line swung in behind the rustlers in order to stop men from applying for employment? A. That did happen a few times, but not regularly.

Q. That happened on the morning of August 21st, did it not? A. Not for that purpose, that morning.

Q. Were there any remarks made by the men in your group who were pickets, to the group up in front of you who were apparently rustling a job? A. I don't believe that there was any conversations went on, none that I know of

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that morning, or hardly any of the mornings thereafter. They were trying to keep the boys from rustling work.

Q. Nothing was said by the members of your group in the picket line, then, to any of these men who were applying for employment? A. None that I know of at all that morning.

Q. Were there any remarks made by your group to the men who were actually selected by the employment agent and who went in? A. I didn't hear of any.

Q. There was complete quiet there? A. It was quiet.

Q. Was this the only morning during the course of picketing that you fellows spoke up to Mr. Bateman and asked him about a job? A. That is the only morning that we rustled in a group.

Q. Did you rustle as individuals—did you individually rustle? A. Yes, sir.

Q. State exactly what you did on those occasions; now, this is prior to August 23rd, when you said you had a meeting up at the general office. A. I didn't get that question.

Q. Well, you say that you did not rustle as a group on any occasions. Will you state what you did individually in the way of making application for employment during that time. A. What I mean by the group was the bunch of miners that was there that was instructed to go back and try to get their jobs back; that we had lost the strike and that we had been promised, through our representatives, that all but a few would be put back to work. Therefore, we goes up there all together to ask for the jobs, to see who the few was that they wouldn't hire.

Q. What day was that? A. That was on this morning, on or about the 21st or 22nd.

Q. The strike was lost, and you had been advised that by your representative, but you were still picketing? A. Yes.

Q. And you swung right from the picket line right up to the employment office? A. Yes, sir; we was merely holding our pickets together until we had a chance for a conference

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with Pat Henrie; then bunched the men together and called it off. That had done been decided.

Q. Now, getting back to my question. You stated that that was the only time you made application, as you call it, as a group, but that individually you applied for employment during that period. Did you state what you actually did in that connection? A. I stated just what I did there, yes.

Q. I don't mean on this morning when you were all there as a group. You stated at other times individuals of that group had made application to Mr. Bateman. A. No, not to Mr. Bateman.

Q. To whom? A. To Pat Henrie, Barkdoll and Mr. Belindas.

Q. Well, that meeting, as I recall your testimony, with Mr. Barkdoll and Mr. Henrie was on August 23rd? A. Yes, sir.

Q. I am trying to get at what happened prior to that meeting down at the employment office. Did you ever make application to Mr. Bateman yourself, individually? A. No, not after I was canned.

Q. So that the only thing you ever did from June 10th to August 23rd, which is the date of your meeting with Henrie and Barkdoll, was on the morning of August 21st, where you were standing with a group of 25 and calling out to Mr. Bateman? A. Yes, sir. That was the way rustling was done at that time by everybody.

Q. Is it customary, to your knowledge, to stand out there and yell up at the employment agent, "How about giving me a job?" A. Certainly so, if there is a large group there, and that's the way you had to rustle.

Q. Well, if the Trial Examiner went down in the morning when there was rustling, would he hear people calling from all over the group to Mr. Bateman? A. Well, it wasn't always calling, but they would hold their hands up. (Illustrating.)

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Q. When requested by him? A. No, when he asked for miners.

Q. Is it not customary for men to go in and have an interview with Mr. Bateman? A. It was not at that time.

Q. Did he ever state, whenever you were in the rustling line, that he would be glad to see men at a certain specified time? A. He never did make the remark of that kind, but one time, right after the beginning of the strike, he come out on the same platform and he says, "If you men don't go back to work by a certain date, you will not work for the Phelps Dodge again."

Q. Do you recall what date that was that he made that statement? A. No, I don't; but I would say it was within 15 days after the strike was called.

Q. Where were you on the date that that statement was made? A. I was on front of his office.

Q. Were you picketing? A. Yes.

Q. How many pickets were there with you at the time? A. Well, at the particular time it is kind of hard to estimate, but they was possibly a hundred pickets.

Q. Were there people rustling at that time? A. A few kids.

Q. Was the picket line that you established stationed directly in front of the employment office? A. Well, it extended sometimes as far as 150 feet away, up beyond the employment office and down below the employment office.

Q. So that a number of the persons in the picket line were directly in front of the employment office? A. Most all the time, yes.

Q. It was not difficult, then, to picket and apply for employment at the same moment? A. Yes. But he never hired until after the shift had gone down and the pickets would disperse.

Q. You stated, Mr. Day, that in December, you believed it was, you spoke to Mr. Barkdoll. What year was that? A. '35.

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Q. Would you state whether or not Mr. Barkdoll is now living? A. I have been informed he is dead.

Q. That was in December, 1935, and I believe you stated that Mr. Barkdoll said that he had no jurisdiction, that you would have to see Mr. Henrie, did he not? A. He did.

Q. Did you ever go to see Mr. Henrie after that conversation with Mr. Barkdoll? A. No, sir.

Q. You testified, I believe, that on December 8, 1937, you made application to Mr. Belindas for employment? A. Yes, sir.

Q. Did you know that the company was not hiring any men at that time? A. No, I didn't know they was not hiring. Since that time I have been informed they have put several back.

Q. Have you been in the district ever since last Summer? A. Yes, sir.

Q. And you did not know that the company was not hiring any more men this Fall? A. No, I didn't know it. It is customary with the Queen to possibly lay off a bunch one week and hire the next.

Q. Well, are you at all familiar with the conditions of the copper market or things that affect this community? A. Not a great deal. I notice the paper daily on that, of course.

Q. Was it not brought to your attention in the community that the company was laying off men during this period? A. Oh, yes. I knew they was laying off.

Q. Were you employed at the time that you made application to Mr. Belindas? A. I was; yes, sir.

Q. Where were you employed? A. At the Denn.

Q. That is, the Shattuck Denn Mining Company? A. The Shattuck Denn.

Q. Were you prompted by anybody to go on December 8th and make application for employment? A. No, sir.

Q. Did it have anything to do with this hearing? A. No, sir.

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Q. Did you receive instructions from Dr. Nylander that you should do that? A. No, sir.

Q. You say you are now employed at the Shattuck Denn? A. Yes, sir.

Q. When did you first go to work for the Shattuck Denn? A. August 14th, in '36.

Q. Have you worked continuously since then for that company? A. I have been employed continuously, but we don't get regular work.

Q. Well, what do you mean by that? A. Well, I am now scheduled for four days a week. In other words, I only got 17 shifts in on this month.

Q. What is your job at the Shattuck Denn Mine? A. Electrician helper.

Q. Has that been your job ever since you went to work for them? A. Yes, sir.

Q. Between the period of August 24th and the date at which you went to work for the Shattuck Denn Mining Company, did you have any other employment? A. On relief.

Q. For that entire period? A. Yes, sir; a part of the time; sometimes I wasn't on relief.

Q. Did you make any effort to get employment? A. Sure.

Q. What efforts? A. I made an effort to get back on with the Phelps Dodge.

Q. Did you try to get work anywhere else? A. No.

Q. When did you start doing relief work? A. I don't know whether I did any relief work in June, '35, or not; but somewhere around the 1st of July, I believe.

Q. 1935? A. Yes, sir.

Q. How many days a week did you work on relief? A. Well, from about 8 to 11 days a month, I believe, I was always allowed.

Q. Was that true all the time up until the time you went to work with the Shattuck Denn? A. Yes, sir.

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Q. That would be the approximate time you worked?

A. Yes, sir.

Q. You stated, I believe, that you were in the picket line continuously from June 10, 1935, until August 24, 1935?

A. Yes, sir.

Q. During the course of the time in which the picket lines were established, were you involved in any fights in the district? A. No, sir.

Q. Were you ever charged with any offenses? A. Yes. I had one charge against me for that.

Q. What was the charge? A. The charge was for striking some fellow with my fist.

Q. Do you remember who it was? A. I believe the fellow's name was Higgins.

Q. Was he employed by the company? A. I don't know whether he was employed or not.

Q. Were you convicted of that charge? A. No, sir.

Q. Did you ever serve any time in jail? A. Yes, sir.

Q. How many days? A. 12 days.

Q. But you were not convicted of the charge? A. Never was brought to trial.

Q. Do you remember a man by the name of Larry Kuder? A. Yes, sir.

Q. Do you recall that he was in a fight with some other men? A. It was reported he was; yes, sir.

Q. You deny that he was? A. I don't know whether he was or wasn't.

Q. Were you at any time held for investigation in connection with that case? A. No, sir.

Q. You would say that you can't recall whether or not Giles Higgins was an employee of the company? A. No, I don't know who they employed.

Q. Did you have a fight with Giles Higgins? A. No, sir.

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Q. Did you strike Giles Higgins? A. No, sir.

Q. You are testifying truthfully now? A. Yes, sir.

Q. It is not true that Giles Higgins was an employee of the company and that, as a result of the strike, you beat up on him? A. No, sir.

Mr. Kitchel: Mr. Trial Examiner, if possible, I would like to continue with the cross-examination of Mr. Day when we start our next session, and when we have available the by laws for which we have asked.

Trial Examiner Kennedy: How much longer do you estimate it will take to finish the cross-examination?

Mr. Kitchel: Well, I should estimate not more than an hour longer.

Trial Examiner Kennedy: It is now 12:10. Do you gentlemen wish to continue this afternoon, or is there any reason why we should not continue this afternoon?

Mr. Kitchel: I believe that Mr. Persinger and I have already discussed that, and counsel for the respondent would like to have the afternoon for other commitments that we have made, in view of the arrangement we made a few days ago.

Mr. Persinger: That is satisfactory.

Trial Examiner Kennedy: Very well.

Mr. Witness, you are still a witness in this case during this recess, and you will not discuss the case with counsel for the Board unless counsel for the respondent is present, until you resume the stand.

The hearing will be in recess until 9:00 o'clock Monday morning.

(Whereupon, at 12:10 o'clock p. m., an adjournment was taken until 9:00 o'clock a. m., January 31, 1938.)

Proceedings.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and
INTERNATIONAL UNION OF MINE, MILL,
and SMELTER WORKERS, LOCAL No. 30.

CASE No.
XXI-C-266

Room 2 Cochise County Court House
Bisbee, Arizona
Monday, January 31, 1938.

The above-entitled matter came on for hearing, pursuant
to adjournment, at 9:00 o'clock a. m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National
Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM
A. EVANS, 807 Title & Trust Building, Phoenix,
Arizona, on behalf of Phelps Dodge Corporation,
Respondents.

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in ses-
sion.

Will the witness take the stand, please.

W. M. Day—For National Labor Relations Board—Cross.

Mr. Kitchel: Mr. Trial Examiner, before we proceed, it was called to my attention that after the Examiner's ruling yesterday excluding all witnesses from the courtroom, that that ruling was technically observed, but the door was open and all the Board's witnesses were standing in the doorway. Could we have that corrected?

Trial Examiner Kennedy: Could we have what corrected?

Mr. Kitchel: That they are practically in the courtroom, with the door open, and there is no purpose in the ruling if they are going to stand in the doorway.

Trial Examiner Kennedy: The understanding is that they are not to be within earshot of the witness on the stand.

Mr. Persinger: I shall be glad to correct that today.

Trial Examiner Kennedy: I think the door ought to be closed; I think we ought to have this door (indicating) closed, too. If anyone wants to hear the proceedings, let him come into the room. Let us keep that door closed, too.

W. M. DAY, the witness on the stand at the time of adjournment, having been previously duly sworn, resumed the stand and further testified as follows:

Cross Examination (Continued).

Mr. Kitchel: Are you ready to proceed, Mr. Examiner?

Trial Examiner Kennedy: Proceed.

Q. (By Mr. Kitchel) Mr. Day, I believe you testified on Saturday that you first went to work with the Shattuck Denn Mining Company on August 14, 1936. Is that correct?

A. Yes, sir.

Q. You also testified, in answer to my question, that at the present time you are not getting full-time work there; is that correct? A. No, sir; I didn't state that.

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Q. Well, I may have misinterpreted you. I believe you said something to the effect of staggered employment. A. I was not getting full-time work in December of '37.

Q. December of '37? A. Yes, sir.

Q. What is the condition at the present time with respect to your employment at Shattuck Denn? A. I get four days a week, or approximately four days a week.

Q. Isn't it true, Mr. Day, that from August 14, 1936, until the latter half of December, 1937, your employment at the Shattuck Denn Mining Company was regular and continuous? A. Yes.

Q. Isn't it true that during that period of time you were employed at 8-hour shifts five days a week? A. Yes, in most cases I got more than five days a week, since that period of time.

Q. You testified, did you not, Mr. Day, that you were at present an officer of the Bisbee Miners' Union, Local No. 30, is that correct? A. That is correct.

Q. And that during the period of time between the 1st of June, 1935, up to the present, you have been quite active in that organization, is that correct? A. Yes, sir.

Q. During the year 1935, when were the regular meetings—what day of the week were the regular meetings of the union held? A. Up until June, '35?

Q. During the year 1935. A. We held a meeting, I believe—it was practically every Saturday.

Q. Saturday nights? A. Yes.

Q. You testified on Saturday, I believe, that you were discharged on June 6, 1935, is that correct? A. Yes, sir.

Q. What day of the week was that? A. That was on Thursday.

Q. You then testified, I believe, that on June 7th, which would then be Friday, a mass meeting was held of the members of Bisbee Miners' Union, Local No. 30, is that correct? A. Yes, sir.

Q. What notice was given of that meeting to the membership? A. Well, I don't know what notice was given. I

W. M. Day—For National Labor Relations Board—Cross.

know there was lots of personal notices, but I was not active in the organization at that time. I held no leadership, so I don't know.

Q. Was Mr. Morrison the President at that time? A. How is that?

Q. Was Mr. Morrison the President at that time? A. Yes.

Mr. Persinger: May I interrupt counsel off the record for a moment, Mr. Examiner?

Trial Examiner Kennedy: Yes, you may.
(Discussion outside the record.)

Mr. Kitchel: Mr. Examiner, in connection with this questioning, counsel for the Board has agreed to stipulate that three days' notice of this meeting of June 7, 1935, was not given to the membership of the union.

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: Very well.

Mr. Kitchel: And that is in accordance with the requirements of the by-laws?

Mr. Persinger: I understand the by-laws require three days' notice.

Q. (By Mr. Kitchel) Mr. Day, how many members of Local No. 30 were present at that meeting on the night of June 7, 1935? A. I cannot say how many was present, but there was quite a crowd.

Q. Could you give us an estimate of the number? A. I believe I would be safe in saying there was from 150 to 200.

Q. Was that the entire membership of the organization? A. I don't know that.

Q. And that turn-out was gotten by personal contact previous to the meeting? A. I don't know that there was any notices given.

Q. You stated, I believe, that at that time there was a vote taken in which the membership voted that a strike should be called, is that correct? A. Yes, sir.

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Q. And you stated, I believe, that the vote was practically unanimous? **A.** I did.

Q. In other words, then, your testimony is that between 100 and 150 men voted for the strike? **A.** I would estimate around that number.

Q. Who, at the present time, has the custody of the records of Miners' Union, Local No. 30? **A.** Mr. Foley has the records of what we have. There were some of the records misplaced.

Q. Do you know whether or not Mr. Foley has in his possession the minutes of the meeting held on June 7, 1935? **A.** I don't know whether he has them or not, but I believe he told me the other day that he didn't have them.

Q. Do you know of your own knowledge what has become of those records? **A.** I do not. There was quite a number of keys for the hall, and different organizations were meeting in there, and we had our records in a desk, and we find a part of them burned up, and we don't know who burned them.

Q. Who was the secretary of the organization in June, 1935? **A.** Mr. A. B. Potter—I believe he was the secretary.

Q. Who was the treasurer? **A.** P. C. Lytle was treasurer up until the meeting before the strike was called, and I were elected treasurer, but never installed. The strike come on during the next week, and everything got into such a turnover there that I never taken office.

Q. Approximately how long did that meeting on the evening of Friday, June 7, 1935, last, Mr. Day? **A.** I believe it lasted two or two-and-a-half hours.

Q. Was that period of time, which you estimate to be two or two-and-a-half hours, the only period of time within which the membership was given an opportunity to vote on this strike proposition? **A.** There was no time set. When the business was finished they disbanded.

Q. And there was no time during that day prior to the time the meeting was called that voting on the proposition was allowed?

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Mr. Persinger: Again, if I may interrupt counsel—Off the record, Mr. Examiner?

Trial Examiner Kennedy: Off the record.
(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Mr. Kitchel: Counsel, Mr. Trial Examiner, have agreed to stipulate that the poles for a strike vote were not open for the required hours as provided in the bylaws for a strike vote.

Mr. Persinger: So stipulated.

Q. (By Mr. Kitchel) Mr. Day, when the strike was called on June 10, do you know whether or not the entire membership of Local No. 30 walked out on that date? A. No, the entire membership didn't.

Q. It is true, then that a substantial number of your membership stayed at work? A. Some did go ahead and continue to work.

Q. Approximately what percentage of your membership? A. Well, it was a very small percentage; I don't know just what figures to put that at.

Q. You have testified that you were discharged by the company on June 6, 1935, and you have also testified that several other men were discharged on the same date, is that correct? A. Yes, sir.

Q. Did you, or any member of your organization, take up with the management of the company the question of those discharged cases at any time prior to June 10, 1935? A. I did not, but our Executive Board did.

Q. Can you testify of your own knowledge that your Executive Board called upon the management with respect to those discharges? A. Nothing more than the reports that they brought back to the union. I believe we might have the records on that.

Q. Could you produce such a record? A. I cannot, but I am pretty sure Mr. Foley can.

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Mr. Kitchel: Off the record.

Trial Examiner Kennedy: Off the record.

(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Kitchel) Who was on this Executive Board that you mention that reported that they had taken this up with the management? A. Mr. Lee White and Henry Hanson, Victor Smith and John Reeves.

Q. Where is Mr. White at the present time, if you know?

A. He is in Park City, Utah.

Q. Was he in the district at the time the strike was called? A. He was not.

Q. Was he then on this Executive Board that you stated called on the management? A. He was on the Executive Board the last meeting, but it was not in regards to the 8 that was discharged. It was others before that.

Q. Where is Mr. Victor Smith at the present time, if you know? A. Mr. Smith is this side of Phoenix—I can't recall the name of the town.

Mr. Persinger: Mesa.

The Witness: Mesa.

Q. (By Mr. Kitchel) Is it the town of Mesa, Arizona? A. Mesa, Arizona.

Q. Where is John Reeves? A. He lives at Apache, Arizona.

Q. Where is Mr. Henry Hanson at the present time, if you know? A. I believe Mr. Hanson is in Kellogg, Idaho.

Q. Let me ask you this, Mr. Day, in order that I may understand you correctly: When you say that you believe the Executive Board to which you have referred discussed discharge cases with the management, are you speaking of the period between June 6, 1935, and June 10, 1935? A. No, not that period.

Q. You will recall, then, whether or not at any time between June 6, 1935, and June 10, 1935, you or any member

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of the union discussed with the management the matter of your discharge and the others that you have mentioned on the 6th day of June? A. No, there was no meeting on that.

Q. Was any notice given to the company of your decision to strike? A. I can't answer that question.

Q. Do you know whether any notice was given? A. No, I don't.

Q. Is it not true, Mr. Day, that with reference to your discharge and those others to whom you have referred on June 6, 1935, there was no discussion of those cases between representatives of the union and representatives of the management between the dates of June 6, 1935, and August 23, 1935, which is the date of a meeting to which you referred in your testimony Saturday? A. Yes, we sent a committee of disinterested parties up there to discuss the matter between that time.

Q. Were they discussing the matter of the strike, or the matter of your discharge and the other men that were with you? A. The whole thing was supposed to be discussed and brought up.

Q. Were you present at any of those meetings? A. No.

Q. You do not know of your own knowledge, then, what transpired at those meetings? A. Nothing more than the report of the committee.

Q. You know the approximate date of that meeting? A. I believe it was on or about the 16th of August, 1935.

Q. Is it not true, Mr. Day, that since August 23, 1935, the union has not requested, nor has there been held, any meeting between the union and representatives of the management for the purpose of discussing the re-employment of the men who walked out on June 10, 1935, or for the purpose of collective bargaining on behalf of any employees of the company, or for any other purpose?

Now, if that question is not clear, the Reporter can read it back to you.

A. Between the dates—I don't recall the date.

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Q. Since August 23, 1935, to date. A. No, we have never met since that time.

Q. Was your answer to my question "No"? A. No, that is correct; of a committee, you say, didn't you?

Q. I said any representatives of the union. A. Any representatives, no.

Q. Are you familiar, Mr. Day, with the filing of the original charges in this case? A. No, I am not familiar with it.

Q. Do you know that there was an original charge filed in May of 1937? A. I did not have to file any charges with the exceptions of sending in some applications.

Q. Applications of what nature, Mr. Day? A. Of discrimination by the Phelps Dodge Company against the men.

Q. Did you send those to the Regional Director? A. Some, I did take an—I don't know that I sent them, but I turned them over to the Secretary.

Q. Were they in the form of affidavits? A. Pretty much.

Q. Were you an officer of Bisbee Miners' Union, Local No. 30 in May, 1937? A. I don't believe I was, in May; I might have been.

Q. Were you in regular attendance of the meetings of the union? A. Yes.

Q. Did you know, in May, 1937, that the charge was filed, signed by John P. Foley, covering the cases of H. J. Montgomery, John Bowden, P. C. Lytle, William Dougherty, Merrell Johnson and James McKelvey? A. I knew they was filed with the Board, but I don't know what time; sometime last spring or summer.

Q. Was there ever, to your knowledge, Mr. Day, during the years 1936 and 1937, any meeting between representatives of the union and representatives of the management, with respect to the cases of the men whom I have just mentioned? A. No, we had no meetings with them.

Q. You are familiar, Mr. Day, are you not, with the list of 48 men, attached to this complaint, which includes yours? A. Yes, sir.

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Q. Were there any meetings going on between May 25, 1937, and December 7, 1937, between representatives of the union and the management, concerning the employment of any or all of the men in that list? A. There was none.

Q. Mr. Day, to your knowledge, has the company ever refused to meet with representatives of your union for any purpose? A. I don't believe they ever refused to meet, but we never got nowheres with them.

Q. But they were always willing to meet at your request, is that correct? A. They always told them to come in at any time, but we never gained a point.

Q. Is it not true, Mr. Day, that the company has never refused to recognize the union as the representatives of such employees of the company as are members of the union in negotiating, fixing, maintaining, changing and seeking to arrange terms or conditions of employment with respect to those men? A. Our committee would report back to us that they were willing to meet at all times, but they never could gain anything in their bargaining.

Q. But my last question was, whether or not they had ever refused to meet for that purpose? A. They never did refuse to meet.

Mr. Persinger: Mr. Examiner, may I remind counsel that there is no charge of refusal to bargain in this case?

Mr. Kitchel: That is not the point of this line of questioning, Mr. Persinger.

Q. (By Mr. Kitchel) Mr. Day, going back for a minute, you have testified as to a meeting of the membership of the union on the evening of Friday, June 7, 1935, at which a strike vote was taken.

Will you tell the Examiner whether or not there was any other meeting at which a strike vote was taken in connection with this walkout? A. They were a meeting, I believe it was April of '35, on a strike vote.

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Q. What was the result of that meeting? A. We lost the strike vote by one-third of one vote.

Q. Was there any meeting subsequent to the meeting of June 7, 1935, at which a strike vote of the membership was taken? A. Before or after?

Q. After June 7, 1935? A. After the 7th?

Q. After June 7th, 1935? A. There was no strike vote taken after that.

Mr. Kitchel: That is all.

Redirect examination.

Q. (By Mr. Persinger) Mr. Day, concerning this first strike vote you mentioned as having been taken in April, did any supervisors of the company ever speak to you about that; that is, any bosses, shift bosses, foremen? A. Yes, oh, yes.

Q. Who did? A. Mr. Marshall.

Q. Who was Mr. Marshall? A. Mr. Chris Marshall was mine foreman.

Q. And anyone else? A. Yes; Tom Morts.

Q. Was that all? A. Well—

Mr. Kitchel: Mr. Examiner, I would like to object to these questions. I do not see what was said about the strike vote prior to June has any bearing on this particular question.

Mr. Persinger: If the Examiner please, counsel opened up this question of the strike vote. I had omitted it completely. I think, since it has been opened, and since it was stated that the strike vote failed, I have the right to show some indication of why it failed at that time.

Mr. Kitchel: I do not think Mr. Day's answer was in response to my question on that.

Mr. Persinger: There was no motion to strike as a result of that.

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Trial Examiner Kennedy: It seems to me that the cross-examination on that point is immaterial, and I do not intend to regard it unless it is connected up. I will sustain the objection. I do not see any point in going into that.

Q. (By Mr. Persinger) Referring to your previous testimony, Mr. Day, you mentioned at one time, if you remember, that you asked Mr. Bateman. Did he say something to Mr. I. V. Pruitt. Who is Mr. I. V. Pruitt? **A.** He is the Sheriff of Cochise County.

Q. And at another point in the transcript there appears the name A. B. Porter; P o r t e r? **A.** Potter.

Q. That should be "Potter"? **A.** Yes.

Q. And at another point there appears the name A. W. Potter. Should that be A. B. Potter? **A.** Yes, sir.

Mr. Persinger: That, again, was in your testimony. I have no further questions.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: No further questions.

Trial Examiner Kennedy: You may be excused. Will counsel stipulate that this witness will not be recalled?

Mr. Persinger: I have no purpose, so far as I know, in further recalling this witness.

Mr. Kitchel: I have none in mind now, Mr. Examiner.

Trial Examiner Kennedy: Very well; you are permanently excused.

Mr. Persinger: You may remain in the hearing room, if you wish.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

Mr. Persinger: Will you take the stand, Mr. Bateman?

**M. A. Bateman—For National Labor Relations Board—
Direct.**

M. A. BATEMAN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your name, please?

The Witness: M. A. Bateman.

Direct examination.

Q. (By Mr. Persinger) Mr. Bateman, are you employed by the Phelps Dodge Corporation? A. I am.

Q. How long have you been employed by them? A. Approximately 27 years.

Q. What position did you hold with the corporation in 1935? A. I was employment agent.

Q. How long did you continue to be employment agent? A. To about August 1st, 1937.

Q. And you were employment agent for the Mines Division of the Copper Queen Branch? A. Yes, sir.

Q. Mr. Bateman, I will show you a number of papers stapled together, which I at this time will offer for identification as Board's Exhibit No. 9, and I will ask you if that is a list compiled by you? A. It is, sir.

(Thereupon the document above referred to was marked as Board's Exhibit No. 9 for identification.)

Q. (By Mr. Persinger) That was compiled in answer to the subpoena? A. It was compiled under my supervision.

Q. Who actually did the work on that? A. I think—no, I made this list. I made this June.

Q. You made that personally? A. Yes, sir.

Mr. Kitchel: Mr. Persinger, what is that list?

Mr. Persinger: This is the list of employees on the payroll of the company for June, 1935.

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Q. Now, first, can you tell me what the numbers preceding the names indicate? A. That's the employee's payroll number.

Q. As I understand it, Mr. Henrie's testimony, each department or shaft has a group of numbers which indicates the man is employed in that department, is that correct? A. Yes, sir.

Q. Can you tell me which department these different groups of members refer to? For example, the 200's first? A. Well, from 200 to the 500's, I think—from 200's to the 515's are assigned to Division A.

Q. What is that division? A. That is the Junction shaft.

Q. I see. What is the next group of numbers? A. The next group of numbers is from 901 to 1208.

Q. And that group applies to which division? A. Division B.

Q. And what is included in that division? A. The Campbell Division.

Q. And what is the next group? A. The Cole Division, Division C, which runs from 1501 to 1618.

Q. And what is the next group of numbers? A. The next group covers the surface roustabout gang, composed of Mexicans, and it runs from 4,001 to 4,050.

Q. And the group after that? A. Is the mechanical department, which runs from—I mean mechanical and construction department—which runs from 5101 to 5850.

Q. And the group following that? A. The next group is the regular watchman's group, running from 5901 to 5926.

Q. And the next group? A. Is the miscellaneous surface departments which includes the warehouse, assay office, gardeners, janitors, and so forth. It extends from 6001 to 6110—I will correct that—to 6048.

The Diamond drill crew runs from 6103 to 6110. And during that month there was some special watchmen on, and their numbers extended from 6202 to 6235.

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The balance are salaried employees and do not have specific payrolls.

Q. Now, there are certain marks on this list that I wish you would explain. For example, following one name is the symbol "5 D.B." What does that mean? A. That means that the employee was working on a five-day basis and was off that day in order to make up time for some prior day worked. He would probably work the following Saturday or Sunday when the mine was normally closed.

Q. And what does the—

Trial Examiner Kennedy: Just a minute. Will you please close that door.

Q. (By Mr. Persinger) What does the figure "1" indicate? A. The "1" indicates that he worked on this day, June 7th, or under the head "Date heading."

Q. That he worked the day which is indicated in the heading? A. Yes.

Q. Could he have worked some other day in the week and still have a number under that heading? A. No.

Q. And what does the symbol "O" indicate? A. That he was off that day, and for some reason—could offer no excuse. We didn't know why he was off.

Q. And "S" appears occasionally. What does that indicate? A. That indicates he was off due to sickness.

Q. And occasionally "A" appears. What does that indicate? A. Off due to accident.

Q. And "F" appears. What does that indicate? A. Off on furlough.

Q. And occasionally there appears a small "f". What does that indicate? A. It indicates he was off due to an accident off duty.

Q. And a capital "V"? A. Vacation.

Q. And then following certain names appears occasionally "E. B. A.—Settlement." What does the "E. B. A." mean? A. "Employees' Benefit Association Settlement."

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Q. That is for a settlement for an accident? A. Well, either sickness or accident.

Q. Mr. Bateman, I will show you an employees service record. I believe that is the name of this? A. Yes.

Q. This is the record of one William Day, and I will ask you to explain certain things on it. Now, in 1935, did you have anything to do with making up these records? A. I did, sir.

Q. What authority did you exercise over the composition of these records? A. Well, full authority, you might say.

Q. Were they made up in your office? A. Yes, sir.

Q. And under your supervision? A. Yes, sir.

Q. Now, what is the actual procedure in making up a record? For example, the first line in this record reads: "11-1-31, Trans.", which, I suppose, means "transferred"? A. Yes, sir.

Q. Occupation: "Mucker, No. 915, Boss: Fisher. Remarks: From C&A pay roll." Now, would you know in advance, that Mr. Day, on November 1, 1931 was going to be transferred, or would you have any notice of that in advance? A. Yes, in some instances we would have notice, and in others we probably would not have.

Q. What is more customary, or is there any settled custom? A. Well, that depends on the transaction. Now, for instance, in that time we were probably notified following.

Q. And how would you be notified, either in advance or following? A. As I say, it depends on the transaction involved. You see, now, on a blanket transfer, as we call them, like that, where we are taking over a division, the men were often selected, in most instances were selected by the foremen and bosses, and assigned to their new departments. Of course, where individual transfers occurred, sometimes we did have advance notice.

Q. Now, what are the mechanics of notifying your department; that is, the foreman makes the transfer, I under-

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stand; is that correct? A. Well, for a single transfer. For instance, in the case of a man requesting a transfer from one division to another, for any reason, why, he would ask his foreman for a transfer slip, which he would bring to my office and I would then arrange his transfer for the other department through the other foreman.

Q. Well, are any transfers ever arranged without your knowledge until it actually happens? A. Well, I should say it depends on this: Sometimes they run along and average more than 50 per cent.

Q. Now, supposing the transfers are made by the foreman. Now are you then notified that there has been a transfer? A. They send in the transfer slips.

Q. The foreman sends them in? A. Yes.

Q. Now, the next line on this record of Mr. Day indicates that on April 29, 1935, he was again transferred to the occupation of motor swamper. Would that be in the Cole Division? A. Yes, 1531 would be the Cole Division.

Q. Under Mr. Ratteree. Would Mr. Ratteree inform you that that transfer had been made? A. No, Mr. Fisher would—Mr. Fisher was his prior boss, but generally he would notify me. He would send in the slip. He was leaving his department, you see, and he would therefore send the slip in to me.

Q. And then when you received the slip you would have a notation made on this card? A. Yes.

Q. Which is kept in your records? A. Yes.

Q. Now, what other records could you keep of such a transfer as that? A. Just a report record, daily report record wherein we list all transfers and changes on the payroll.

Q. There is no other record that you keep confined exclusively to William Day other than this card? A. No, that is the only record, that is the basis of all the records and all the reports.

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Q. Now, referring down to the lower half of this record, which is marked off more or less as a graph. In the year 1932, following the month "January" appear the figures 6-8. Now, what does that indicate? A. We keep our—we run our payroll rather in two periods, and we pay twice a month, and at that time we were on a short-week, and that indicates—the 6 indicates that Mr. Day worked 6 days in the first period, or during the first 15 days; and 8 in the last part of the month.

Q. Well, now, on— A. (Interrupting) You see, that was the basis of operation all the way through there.

Q. Now, in the year 1935, following the month of January appears a blank. Now, does that mean that he worked no days, or worked all days? A. No, it means we ceased posting at that time.

Q. Oh, you don't use that any more? A. No, we have taken it up again, but we stopped it at that time.

Q. Well, the "f" which appears in the blank space would indicate he was off on furlough? A. Yes.

Q. Now, on the other side of the card following the wording "Accident Record," can you tell me what "4-1-32, A, C, cert." means? A. It means that Mr. Day had completed a course of first aid training and was awarded a certificate at that time, company certificate, for having completed the course.

Q. And am I correct in assuming that under "Honor Roll Record" the figures "4-1-35" followed by "Sixth Year" means that he had worked 6 years without an off-time accident? A. Well, it means he might have worked longer. But we started our safety program and following that he worked that term.

Q. I see. Referring again to the first face of this card, there appears on the third line the figures "6/10/35," and following that "Quit," and "Occupation, Motor Swamper," "1535, Boss, Battery," and then a notation "Walked out

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when strike was called and picketed all during strike." Who determined that he picketed all during the strike? A. I probably made that notation.

Q. In other words, you recognized him on the picket line at various times? A. Uh-huh.; uh-huh.

Q. Now, following that is an entry "6/6/35; Discharged; Motor Swamper; 1535; Pomeroy," and "Remarks, creating trouble on the job and the change room." Doesn't that seem to conflict with the previous item? A. Well, it does, but it is explainable to this extent: A day or so after the strike we dropped all men who were on the picket lines to clean up the payroll. Later this discharge slip came through from the foreman. You see, they were on a 5-day basis. They wouldn't have been working the 7th, 8th and 9th, and the mail service was slow at that time. We had about one mail service a day, so I probably wouldn't get that until the 10th or the 11th after this entry would have been made.

Q. In other words— A. So then this was posted—this is a notation.

Q. It would take you probably 5 days to get the notice that he had been discharged? A. Yes, in some instances.

Q. What is the connection between Mr. Pomeroy and Mr. Ratteree, both of whom are listed as bosses? A. Well, in making an assignment, the foreman then assigns the employee to a shift boss. We do not do that at the employment office. We simply assign him to the division and to the foreman.

Q. Who is the foreman in this instance? A. Mr. Ratteree.

Q. Who is Mr. Pomeroy? A. He was the shift boss.

Q. I see. Had you received any previous notice of that discharge for creating trouble on the job and in the change room? A. No.

The first notice you got was the actual slip that came through to you? A. Yes.

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Mr. Persinger: I will offer this as Board's Exhibit No. 10.

Trial Examiner Kennedy: I believe there was Board's Exhibit 9 for Identification. Do you want to dispose of that?

Mr. Persinger: No, not yet.

Trial Examiner Kennedy: Very well. It is offered in evidence as Board's Exhibit No. 10. Is there any objection?

Mr. Kitchel: I would like to know what the purpose of the offer is, whether to show the form of the card, or the service record of Mr. Day.

Mr. Persinger: It is to show the service record kept by the company for Mr. Day. The form of card has already been shown by Tom Abedin's card, which is in evidence as Board's Exhibit No. 8.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: Received in evidence as Board's Exhibit No. 10.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 10.)

Q. (By Mr. Persinger) Mr. Bateman, do you know how long Mr. Batteree was foreman at the Cole shaft? A. I think from—We started operations over there, I believe, on March 1, 1934. I think at that time he was appointed foreman. It was either the 1st of March or the 1st of April. I know it was in the spring.

Q. How long did he continue to act as foreman? A. I really couldn't tell you.

Q. Can you tell me approximately whether it was a matter of months, or for a year or more? A. Oh, I think it was at least 18 months.

Q. I will show you a list made up in answer to a subpoena, of transfer to and from Cole, and you will see that

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it indicates that on April 26, 1934, Mr. U. S. Batteree was transferred to salary, and the general heading is: "Out of the Cole." Did he continue as foreman after that? A. Yes, that means that he was transferred from a day's pay to a salary.

Q. Oh, that is all it is? A. He remained in the same position.

Q. I see. Thank you. Were you consulted concerning any of the transfers from various divisions to the Cole shaft during the 12 months or so after it opened? A. I couldn't say; I don't believe so.

Q. Normally, who would determine those transfers? A. The general foreman.

Q. Mr. Fisher? A. I think Mr. Fisher was general foreman then.

Q. What would be the mechanics of that, if you know? A. Well the way it was worked then, and still worked, I presume, is for the foreman—the foreman of one division who requires men, especially when they are building up a division, to request the general foreman for men. Now, if he wants 10 men, he may assign 5 from Division A, 5 from Division B.

Q. That is, in this case, Mr. Batteree would request Mr. Fisher to furnish him a certain number of men to fill certain jobs? A. Yes.

Q. Mr. Fisher would then go to the foreman at other divisions and say, "Let me have so many men out of your division"? A. Yes, sir.

And, so far as you know, was that the way the transfers actually were determined, to the Cole shaft? A. Well, that would be the majority, I would say.

Q. The majority? A. Yes.

Q. So far as you know, there was no general policy connected with those transfers? A. Not to my knowledge.

Q. In 1935, from June 10th on, who determined whether or not the individuals who had gone out on strike and ap-

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peared on the picket line would or would not be reinstated? Who decided that question? A. I couldn't tell you. It is above my head.

Q. In other words, you received orders on it? A. No.

Q. You did not receive orders? A. Not to reinstate anybody, no.

Q. Well, did you receive orders not to reinstate them? A. No.

Q. You received no orders concerning it at all? A. Yes, I did.

Q. What orders did you receive? A. Well, shortly after the strike, probably a week or so, I was instructed by my supervisors to "go slow" on it until they saw what happened.

Q. "Go slow" on what? A. Reinstating any of them.

Q. I see. Who were your supervisors? A. Mr. Hodgson and Mr. Henrie.

Q. Were those instructions changed later after a period of time elapsed? A. No, I don't think they have been changed.

Q. They remained the same since? A. Yes, sir.

Q. Did you ever reinstate any of the men who were on the picket line? A. I think we did; three or four.

Q. Can you give me the names of any of them? A. Owen Western. I think there are three or four more. I can't recall their names right now.

Q. And the only orders you ever received on the subject were from Captain Hodgson and Mr. Henrie, to go slow until they saw how things were going to work out? A. Yes. You see, things were sort of in a turmoil, and—

Q. By the way, you said that you received those instructions about a week after the strike. Do you mean, after the beginning or the end of the strike? A. No, I mean at the beginning of the strike.

Q. At the beginning? A. It was a week or ten days. I couldn't say definitely; somewhere around in there.

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Cross.*

Q. A week or ten days following June 10th? A. Yes.

Q. But at no time did you receive any definite instructions not to re-hire anybody; is that correct? A. No, sir.

Mr. Persinger: I think that is all.

Trial Examiner Kennedy: Cross examination.

Cross examination:

Q. (By Mr. Kitchel) I have just one question, Mr. Bateman. You mentioned the name of Mr. Owen Western as having been reemployed. What was your experience with that case on the question of reemployment? Can you recite whether or not Mr. Western actually went to work after he was reemployed? A. Yes. He is still working, as far as I know. He was when I left.

Q. When was he employed? A. I think about four days after the strike was called; either the third or fourth day; it might have been the fifth day; I can't say now; it was a long time ago. I think it was the first week.

Q. Did he go to work at that time? A. Yes, he did.

Mr. Kitchel: That is all.

Mr. Persinger: That is all.

Examination by the Trial Examiner.

Q. (By Trial Examiner Kennedy) Where is your office located? A. My office is located on Junction Road, opposite the Junction shaft gate, and about 300 feet below it.

Q. Was it there in 1935 at the same place? A. That is where it was in 1935.

Q. How does it happen it took 5 days to get mail to your office from these places? A. Well, you see, this happened on a Thursday—this discharge, as I recall it—and the mines were down Friday—or Saturday and Sunday. Now, if the foreman failed to make out—There was one mail a day to the Cole. If he failed to call for the mail—rather, if the

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foreman failed to make up the slip until lunch time, which was generally the practice, you see, I wouldn't get it; it wouldn't leave there until Monday.

Trial Examiner Kennedy: That is all.

Any further questions?

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: Is this witness wanted?

Mr. Persinger: I believe there is one further question I am going to ask at this time. It will save recalling him.

Redirect examination.

Q. (By Mr. Persinger) Did Mr. Day call on you in reference to that discharge, do you remember? A. I believe he did. I saw an account of it in the paper the other day, and I recall having a conversation with Mr. Day.

Q. Do you remember how long that was after the discharges? A. I think it was on a Sunday.

Q. Sunday? A. The Sunday following.

Q. Were you in your office on Sunday? A. No, sir. He came to see me at the Copper Queen Hotel.

Q. Concerning this discharge, or did he come— A. No, I believe not. It was another matter. It was a matter pertaining to a wage rate, I think.

Q. Yes; I believe that is correct. A. Yes.

Q. Did he come to you on the same day that he received his discharge slip, or the following day, and ask you what it meant, that he didn't know what it meant, and asked you if you could tell him why he had been discharged, after you had explained it was a discharge slip? A. I don't recall that he did.

Q. Do you recall having told him it was on account of intimidation? A. No.

Q. You don't recall that? A. I don't think I discussed it with him.

*M. A. Bateman—For National Labor Relations Board—
Redirect.*

Q. So far as you can remember, the first information you received on the discharge was the slip that came through the following Monday or Tuesday? A. No. As I recall it, I heard something about it Saturday morning, and I left that Saturday noon and went to Phoenix, and didn't come back until late Sunday morning—Sunday evening.

Q. Do you remember what you heard about it Saturday morning? A. No; something to the effect that there were 6 or 8 men canned at the Cole.

Q. And you had had no information in advance that any of them would be canned? A. No.

Q. And you had no information that these 8, until you heard it indirectly on Saturday morning, had been canned? A. Yes.

Q. And the official notice came through the following week? A. Yes; the following Monday or Tuesday.

Mr. Persinger: I see. That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: That is all.

Mr. Trial Examiner, Mr. Bateman was employment agent during this period. We cannot very well tell at this time whether we will need him or not. It depends upon what other witnesses appear.

Trial Examiner Kennedy: You are temporarily excused, Mr. Bateman. You will not remain in the courtroom.

(Witness temporarily excused.)

Mr. Persinger: Could we take about a 5-minute recess?

Trial Examiner Kennedy: We will take a 5-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Kennedy: The hearing will be in session.

*J. G. Berlendis—For National Labor Relations Board—
Direct.*

J. G. BERLENDIS called as a witness by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: J. G. Berlendis.

Direct examination:

Q. (By Mr. Persinger) Mr. Berlendis, what is your position with Phelps Dodge Company? A. Employment agent.

Q. And how long have you held that position? A. Since about the 1st of August, this year—last year, rather.

Q. Had you been previously employed by the company? A. Yes.

Q. In what capacity? A. Cashier was the title.

Q. Were you cashier in 1935? A. Yes.

Q. As cashier, what were your duties? A. Well, payment of the bills, the corporation bills, and the keeping of their general books.

Q. Did you have anything to do with keeping the payroll— A. Not in any way whatever.

Q. You didn't pay the men? A. No.

Q. Now, I understand that you assisted Mr. Bateman in the compilation of certain lists in answer to the subpoena. A. Yes, I did.

Q. If I read off to you the title of each of these lists, can you tell me which ones you prepared, and which ones Mr. Bateman prepared? A. I think I can.

Q. A list of transfers to and from the Cole shaft. A. I had nothing to do with that.

Q. An employment record, that is, the name and date of employment of persons employed or re-employed since June 10, 1935. A. Well, I helped to type that list, yes. I didn't type it all, most of it.

*J. G. Berlendis—For National Labor Relations Board—
Direct.*

Mr. Persinger: I will offer this for identification as Board's Exhibit 11.

Mr. Reporter, will you mark that for identification? (Thereupon the document above referred to was marked as Board's Exhibit No. 11 for identification.)

Q. (By Mr. Persinger) I note that in front of each name there appears either a red mark or a blue mark, and on the first page of this list appears an explanation that the blue marks indicate persons hired who had previously worked for respondent at some time between June 10, '34, and June 10, '35. Have you checked that to make sure that the blue mark does indicate those persons? A. Yes, I have checked it.

Q. And is that correct? A. That is correct.

Q. And the red marks indicate persons hired between June 10, '35, and November, '35, who had not previously worked for the company from June 10, '34, to June 10, '35. You also checked that? A. I went through that twice.

Q. And is that correct? A. Yes.

Q. Did you have anything to do with compiling the payroll list for June, 1935? A. I typed one sheet, I don't remember just which one it was, there were several.

Q. One sheet in that list? A. Well, I mean one set of sheets; there are several sets, I understand.

Q. Well, there is a set for June of 1935, and a set for July, August and for September. A. Well, that is what I mean. I think I worked only on the one for the month of July. I wouldn't be absolutely sure. I could tell if I would see it.

Q. Then there are three lists of watchmen, one of regular watchmen, one of extra watchmen, and one of employees used as watchmen. A. I didn't compile that.

Q. You had nothing to do with that? A. No.

Q. And at the present time—strike that.

*J. G. Berlendis—For National Labor Relations Board—
Cross.*

Mr. Persinger: I don't believe I have any further questions.

Trial Examiner Kennedy: Any cross examination?

Mr. Kitchel: I just have one question.

Cross examination:

Q. (By Mr. Kitchel) Mr. Berlendis, I will hand you Board's Exhibit 11 for identification and you will note that before some of the names instead of a straight line in either a red or blue mark, there is an asterisk in either red or blue. Will you explain what that means? A. Well, in checking through we find that sometimes a man is hired more than once, or he is re-hired more than once, and those with a star evidently have been hired two or more times.

Q. In reaching the totals which you have placed on the recapitulation, for instance, under blue, the figure "69" appears. All those men who were hired more than once counted as a different individual each time? A. They are.

Q. And the same applies to the reds? A. It does.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Will it be stipulated that this witness is permanently excused?

Mr. Kitchel: We can't tell yet, Mr. Examiner, on account of his position.

Trial Examiner Kennedy: You are excused, but you are instructed not to stay in the courtroom.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

Mr. Persinger: Are there any persons in the room who are going to testify for the Board? (No response.)

*Lloyd Thomas Buell—For National Labor Relations
Board—Direct.*

LLOYD THOMAS BUELL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name?

The Witness: Lloyd Thomas Buell.

Direct examination:

Q. (By Mr. Persinger) Are you employed by the Phelps Dodge Corporation, Mr. Buell? A. I am.

Trial Examiner Kennedy: Speak out, please.

Q. (By Mr. Persinger) In what capacity? A. Chief clerk.

Q. And how long have you held that position? A. Since 1925.

Q. You were chief clerk in 1935, then? A. I was.

Q. As chief clerk, what are your duties? A. I have supervision of the accounting records for the branch.

Q. For the entire branch? A. For the Copper Queen Branch.

Q. That includes both the Mines Division and the Smelting Division? A. Yes, I have general supervision of the smelter accounts, but I don't pay much attention to the details of the smelter.

Q. The paymaster, Mr. Hicks, is under you? A. He is.

Q. Now, do you have charge of the records of employment? A. No, sir.

Q. Do you have charge of any efficiency records? A. Yes.

Q. You do? A. Yes.

Q. What efficiency records are kept? A. The records of production in tons per shift worked.

*Lloyd Thomas Buell—For National Labor Relations
Board—Direct.*

Q. Is that kept for each employee underground? A. No—well, yes, in the stopes; not each employee. That record is kept for each stope at each working place.

Mr. Persinger: Oh, I see.

Mr. Evans: Mr. Trial Examiner, off the record a minute, please.

Trial Examiner Kennedy: Off the record.

(Remarks outside the record.)

Trial Examiner Kennedy: On the record.

Q. (By Mr. Persinger) Do you have charge of men's time records? A. I do.

Q. That is the time they work? A. I do.

Q. Do you have charge of the records of payment of wages and salaries? A. I do.

Q. How are time records kept, and what different records do you have? A. What was the question, please?

Trial Examiner Kennedy: Read the question, please.

(The question referred to was read by the Reporter, as set forth above.)

The Witness: The original source of time records is the time card for each man each-day that he works.

Q. (By Mr. Persinger) Who fills out that card? A. Either the individual himself or his boss.

Q. Where does that card go from the individual? What does he do with it after he fills it out? A. He gives it—I don't know what he does with it. I imagine he gives it to his boss.

Q. How does it come to you? A. It comes to me in a package with a rubber band around it from outside on the works; that is, there is a rubber band around each package. Each boss sends in his own tickets.

*Lloyd Thomas Buell—For National Labor Relations
Board—Direct.*

Q. I see. That is, each shift boss? A. Each shift boss or each shop boss, surface boss.

Q. For what purposes are those time records kept? A. They provide us with information for paying men and for distributing the cost of labor to different operating accounts.

Q. Are you informed in case a man is transferred from one department to another? A. Generally.

Q. How does that information reach your department? A. Generally by an advice from the employment department.

Q. Is that in written form usually, or oral? A. Written, generally.

Q. Usually written? A. Yes, sir.

Q. In the case of a lay-off, how are you informed, and by whom, as to what individuals have been or are going to be laid off? A. I don't know of any difference between cases. We are always informed in the same way.

Q. How is that? A. By a written notice that certain men are dropped or transferred.

Q. Does that come from shift bosses or foremen, or from the employment division? A. From the employment department.

Q. In the case of a discharge, does information reach you in the same manner as in the case of a lay-off? A. There are two sources of information in a case of that kind.

Q. What are they? A. The individual may present himself at the window with a request for his time—a written notice of his severance from employment; and we will also get a written notice that a certain man is dropped from the payroll. That all depends whether we get one before the other.

Q. When there is a written notice, where does the written notice that a man is dropped from the payroll originate? A. The employment department.

Lloyd Thomas Buell—For National Labor Relations Board—Direct.

Q. Before a man can get his pay he has to come to your department for his time slip, is that correct? A. We write all payroll checks and deliver them to the individual.

Q. Do you write out time slips, too? A. We do not.

Q. Do you know which department writes those? A. The employment department.

Mr. Persinger: Counsel has just handed me a perforated sheet.

Q. I will ask you to tell me what it is? A. The bottom half of this sheet is the customary notice of the advice to my department from the employment department to pay a man the amount he has coming.

Q. Does the top half of that sheet go to your department? A. No, it doesn't.

Mr. Persinger: I see. I offer this as Board's Exhibit No. 12.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence as Board's Exhibit No. 12.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 12.)

Trial Examiner Kennedy: Hereafter, counsel, when you are discussing a document with the witness, I suggest that it be marked for identification at the outset, so the record will show immediately what document you are referring to.

Proceed.

Mr. Persinger: I believe that is all.

Trial Examiner Kennedy: Cross examination.

Mr. Kitchel: No questions.

Trial Examiner Kennedy: Is it stipulated that you will not recall this witness?

E. C. Hicks—For National Labor Relations Board—Direct.

Mr. Kitchell: Yes, Mr. Examiner.

Trial Examiner Kennedy: Mr. Persinger?

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

Mr. Kitchell: Mr. Buell, will you ask Mr. Hicks to come in?

E. C. Hicks, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: E. C. Hicks.

Direct examination:

Q. (By Mr. Persinger) Mr. Hicks are you employed by Phelps Dodge Corporation? A. Yes, sir.

Q. In what capacity? A. Paymaster.

Q. How long have you held that position? A. Eighteen years.

Q. You were paymaster in June and July of 1935? A. Yes.

Q. What are the duties of your position? A. Well, I am in direct charge of the payroll.

Q. What records are kept for the purposes of making up the payroll? A. Time books and pay rolls.

Q. That is all, just those two sets of records? A. Well, there are a great many different records, but just for the purpose of making up the payroll you have your time cards and time books and payroll sheets.

Q. Do you have supervision over any of the records of the employees? A. Well, in a way, yes.

E. C. Hicks—For National Labor Relations Board—Direct.

Q. What records would they be? A. Well, they are records of the store accounts, hospital fees, and bills they owe, and things like that—all the records that go to make up the payroll.

Q. In case a man is transferred from one department to another, how do you receive notice of that transfer so as to make the necessary change on the payroll? A. It shows on the record we receive from the employment department.

Q. And, normally, how long is that received after the actual transfer has been made? A. Oh, we get it in there several times in a period, that is, in a two-week period, three or four days apart, something like that.

Q. And each time a transfer is made you change the payroll number or the check number of the individual who has been transferred? A. We have to change his payroll number, yes.

Q. Now, in cases of discharge, does notice reach you also from the employment department? A. Well, we get a notice that the man has left the service.

Q. What form does that notice take? A. It is on a sheet showing the—

Q. (Interrupting) A printed form? A. No, typewritten.

Q. Typewritten? A. Yes.

Q. And that comes to you from the employment department? A. Employment department; yes.

Q. And normally, then, how long after the actual discharge has taken place, do you receive that notice? A. Well, that is on the same sheet from which we get the records of transfers; probably in two weeks we will get four or five of them.

Q. In other words, they don't come in singly, but they come in groups? A. No, it is all in a day's business.

Q. Do you recollect that William Day and certain other employees in the Cole shaft were discharged about June 6, 1935? A. I wouldn't recollect that; no.

Q. You don't remember that? A. No.

E. C. Hicks—For National Labor Relations Board—Direct.

Q. This has been marked as Board's Exhibit 10. I will ask you to notice that the third line reads: "June 10, 1935. Quit. Walked out when strike was called and picketed all during strike." And the line below that, the date is June 6, 1935. Now, can you tell me how notice of those would reach you, and whether or not they would normally reach you at approximately the same time, or at different times? A. Well, the records that reached us would simply give us the name and say he left the service.

Q. And would it give the date that he left? A. Yes.

Q. And from that you had his time record all ready, or do you wait for that to come in? A. No, his time record is kept up every day, the time cards come in every day and are posted daily.

Q. And with that notice that you receive that he has left the service, you turn to his time card to make up his check; is that correct? A. No.

Q. What procedure do you use? A. We make up his check from the time slip he presents.

Q. Oh, he presents you a slip. I show you Board's Exhibit 12. Is the lower half of that the time slip which the man himself presents? A. Yes.

Q. And you make up your checks from that? A. Yes.

Q. Who makes up this time slip, do you know? Is that the employment department? A. Well, when we get it it is signed by the employment agent, when we get it from the man.

Q. Are you ever informed in advance that certain men are going to be transferred? A. No, sir.

Q. Or are going to be laid off? A. No, sir.

Q. Or going to be discharged? A. No, sir.

Mr. Persinger: That is all.

Mr. Kitchel: No questions.

Trial Examiner Kennedy: Is this witness required further?

Mr. Kitchel: No, Mr. Examiner; not by us.

*Levi Crandal—For National Labor Relations Board—
Direct.*

Mr. Persinger: Not by the Board.

Trial Examiner Kennedy: You are permanently excused. Next witness. (Witness excused.)

Mr. Kitchel: May this be off the record?

Trial Examiner Kennedy: Off the record.
(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

Mr. Persinger: Call Mr. Crandal.

LEVI CRANDAL, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: State your name.

The Witness: Levi Crandal.

Direct examination:

Q. (By Mr. Persinger) Mr. Crandal, were you formerly employed by Phelps Dodge Corporation? A. I was.

Q. When were you first employed by the Corporation? A. February 2nd, in '27.

Q. And how long did you work? A. I worked 4 weeks and 1 day, and got laid off March 3rd, the same year.

Q. And when did you return to work? A. I went to work at the Calumet & Arizona the 22nd of March, '27.

Q. And you worked how long? A. Until the merger.

Q. And were you laid off at the time of the merger? A. No.

Q. And you continued to work until what time? A. Until June 6, 1935.

Q. What job did you have when you started? A. Mucker.

*Levi Crandal—For National Labor Relations Board—
Direct.*

Q. And what job did you have the 1st of June, 1935?

A. I was—the 1st of June, 1935, I was a Finley operator, mucking machine operator.

Q. What is the difference, then, in rate of pay between mucker and mucking machine operator? A. The mucker, that is 4.40, and the mucking machine operator got 5.23.

Q. That is \$5.23 a day? A. Yes, \$5.23 a day.

Q. Your employment with the company was terminated on the 6th of June, 1935? A. That is right.

Q. Was that voluntary or involuntary? Did you quit, or— A. No, I got fired.

Q. You were fired? A. Yes.

Q. By whom were you fired? A. Ratteree, U. S. Ratteree, the foreman.

Q. And what department were you working in? A. The Cole.

Q. That is the Cole shaft? A. The Cole shaft.

Q. What time of day were you discharged? A. Going on the shift about—I would say about a quarter after 4:00 in the evening.

Q. You were going on the night shift? A. Going on the night shift.

Q. Was anyone with you when you were discharged? A. My brother.

Q. Was anyone discharged when you were discharged, anyone else? A. They was myself and my brother and Art Hall.

Q. The three of you were discharged at the same time? A. Well, Jack Cornet, he wasn't discharged at that time, but I seen the time slip. He had it ready for him, but he was off sick.

Q. And the three of you actually were discharged at the same time? A. Three.

Q. Now, how did Mr. Ratteree inform you that you were discharged? A. Well, I got out of the car and started to the change room and he called me back to the office.

*Levi Crandal—For National Labor Relations Board--
Direct.*

Q. And what did he say and what did he do? A. Well, he didn't say—he says—he just handed me the time slip.

Q. Did you ask him anything? A. I asked him what was the reason. He didn't say.

Q. Was anyone else present? A. The shift boss, Clarence Ridgeway.

Q. Did he say anything? A. No.

Q. Did you ask him anything? A. I asked him, wasn't my work satisfaction? He didn't say nothing; he just shook his head.

Q. Did you inquire of anyone else as to why you had been discharged? A. No.

Q. You were handed your time slip? A. At the office of the Cole.

Q. When did you get your pay? A. Well, I went to get my pay the 21st of June, but I didn't get it; I owed the company store.

Q. I see. A. And they kept the pay.

Q. Was any reason ever given you by any foreman or supervisor or official of the company for that discharge? A. No.

Q. Was any reason written on the slip you had? A. No. It's a discharge; that is all it was.

Q. Are you a member of the International Union of Mine, Mill and Smelter Workers? A. I am.

Q. Local No. 30? A. I am.

Q. How long have you been a member? A. Ever since they got their charter in '33, if I am not mistaken.

Q. You were a member at the time of your discharge, June 6, 1935? A. I was.

Q. Following your discharge, did you notify the Union that you had been discharged? A. I did.

Q. Was any action taken by the Union? A. There was.

Q. What action was taken? A. A strike vote.

Q. How long after your discharge was that taken? A. The next night,—the same—the same night; Friday night.

*Levi Crandal—For National Labor Relations Board—
Direct.*

Q. Friday night? A. Yes.

Q. What day of the week were you discharged? A. Friday night—I was discharged on Thursday.

Q. It was the night of the following day, then? A. Yes.

Q. Do you know how the strike vote came out? A. No, I couldn't say just how it did.

Q. I do not mean the result in number of ballots, but how did the vote run? Was it to strike or not to strike?

A. To strike; to strike.

Q. Was a strike actually called as a result of that vote?

A. It was. They sent a telegram to the Board member.

Q. What I mean is, Did an actual walkout of the men take place? A. Yes, sir.

Q. When? A. Well, from the Saturday.

Q. Was there any picket line set up? A. Not until Monday.

Q. When you say the walkout took place on Saturday, did the mine work on Saturday? A. No. It taken place the Monday. That's when the strike went in action.

Q. Were you on the picket line on Monday? A. I was.

Q. What was the last day that you remember having been on the picket line? A. Either on the evening of the 23rd or the morning of the 24th.

Q. Of what month? A. Of August.

Q. When was the strike called off? A. The 24th of August.

Q. At any time between June 10, 1935, and August 24, 1935, did you personally apply for reinstatement? A. August 21st.

Q. Where? A. At the employment office.

Q. Was that inside or outside the office? A. Outside.

Q. To whom did you apply? A. Bateman, M. A. Bateman.

Q. Where was he? A. Standing on the steps.

Q. Where were you? A. Out in front of the office.

*Levi Crandal—For National Labor Relations Board—
Direct.*

Q. Was anyone else around? A. Yes; there was a group of men around.

Q. Were there other pickets there? A. There was.

Q. Were there persons who were not pickets present? A. There was.

Q. Did you see Mr. Bateman come out of his office? A. I did.

Q. What did he do and say when he came out? A. Well, he come out, put his foot up on the rail there, and he asked, "Was there any miners in the bunch?"

Q. Did anyone say anything? A. Bill Day says—he was the first one to speak up. He says, "I'm a miner; how about my job?"

There were several more; I couldn't recall their names; and then I asked him, "How about my job?"

Q. And what did Mr. Bateman say? A. He shook his head and says. "No." He says, "You'll never work for the company no more."

Q. Was anything said to that? A. Well, Bill Day asked him—says, "Just whom do you mean?" He says, "You strikers."

Q. Was anything further said? A. Well, there was, but something drawed my attention. I didn't catch all of it.

Q. How much longer did you remain in the vicinity of the employment office? A. Oh, about 10 or 15 minutes, I guess, after that.

Q. And then you went away? A. Yes, sir.

Q. Have you at any time since August 21, 1935, applied for work with the company? A. No.

Mr. Persinger: I will offer as Board's Exhibit No. 13 the employment record of the Witness Levie Crandal.

Trial Examiner Kennedy: You are offering that?

Mr. Persinger: I am offering it in evidence.

Trial Examiner Kennedy: Have you seen it?

*Levi Crandal—For National Labor Relations Board—
Cross.*

Mr. Kitchel: No objection.

Mr. Evans: We have no objection.

Trial Examiner Kennedy: It may be received in evidence as Board's Exhibit No. 13.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 13.)

Mr. Persinger: Take the witness.

Cross-examination:

Q. (By Mr. Kitchel) Mr. Crandal, are you an employee of the Phelps Dodge Corporation at the present time? A. I am not.

Q. Are you employed at the present time by any employer? A. Shattuck Denn Mining Company.

Q. When did you first go to work for the Shattuck Denn Mining Company? A. In June 7th in '37.

Q. Have you worked continuously for the Shattuck Denn Mining Company since that date? A. I have.

Q. At what occupation are you employed with that company? A. Miner.

Q. Mr. Crandal, were you an employee of the Phelps Dodge Corporation on June 10, 1935? A. I was not.

Q. You have testified, Mr. Crandal, that you were discharged on June 6, 1935, have you not? A. I was.

Q. During the period from that date until the time you started to work for the Shattuck Denn Mining Company, what employment have you had? A. Well, I had several jobs.

Q. Will you tell us what they were in order, starting with June 6, 1935? A. Counting the relief, too?

Q. Well, yes. A. I was on the relief until June—or August the 24th, and I left the day the strike was called off.

Q. You left the relief work? A. Yes, sir.

*Levi Crandal—For National Labor Relations Board—
Cross.*

Q. And then what did you do? A. I went to Kingman—went to mining.

Q. By whom were you employed at Kingman? A. Keystone Mining Company.

Q. Were you employed as a miner? A. A miner.

Q. What was the date that you started, do you recall?

A. About the 15th of September.

Q. The 15th of September, 1935? A. '35.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. Every day? A. No, I wasn't every day.

Q. Was it customary during the course of the strike for the picket line to move up behind those rustling jobs at the employment office pretty nearly every morning? A. No, not every morning, or I wasn't there every morning.

Q. Well, the mornings that you were there, didn't the picket line, after the shift had gone on, move in behind those rustling jobs by the employment office? A. Well, usually we would go to town and then come back up.

Q. Come back up at about the time Mr. Bateman would generally appear? A. Yes.

Q. And the pickets would go there as a group? A. Well, they would be there in a group. They wouldn't come there one by one; maybe two or three.

Q. Isn't it a fact that on every occasion that you were present where that happened when Mr. Bateman came out on the platform, the men in your group called out to him and— A. (Interrupting) No, sir.

Q. (Continuing)—and yelled, "How about a job?" A. No, sir, none that I hear.

Q. In other words, you are testifying that August 21st was the only date upon which that happened? A. That I can remember, yes.

Q. How many men were present at the meeting that you have testified to on the evening of Friday, June 7, 1935?

*Levi Crandal—For National Labor Relations Board—
Cross.*

How many members of Bisbee Miners' Union, Local No. 30?

A. I couldn't say for sure.

Q. What is your closest estimate? A. I would say probably 65 or 70.

Q. You testified, Mr. Crandal, that on August 21, 19—
strike that.

You testified, Mr. Crandal, that on June 21, 1935, you went to get your pay, but that you did not get any, is that correct? A. That is correct.

Q. Isn't it true that prior to that time you had made a voluntary assignment of your wages in orders to secure credit at the store? A. Well, I signed a card to check off \$2.50 a month—a pay—\$5 a month.

Q. And that was the reason that you had nothing coming on June 21st? A. Yes, sir.

Mr. Kitchel: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you wish to recall this witness, either party?

Mr. Persinger: I don't think that I will have any occasion to recall this witness.

Mr. Kitchel: I don't believe we will recall him.

Trial Examiner Kennedy: You are excused, and you may remain in the courtroom. (Witness excused.)

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: Very well. Proceed.

Mr. Persinger: Call Mr. Hargus.

*Edgar Lewis Hargus—For National Labor Relations
Board—Direct.*

EDGAR LEWIS HARGUS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: State your name, please.

The Witness: Edgar Lewis Hargus.

Direct examination:

Q. (By Mr. Persinger) Mr. Hargus, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. And were you first employed by them about the time when the merger with the C. & A. took place? A. No, sir.

Q. You were employed first when? A. 1924.

Q. And did you work continuously after that? A. No, I worked about three months, I think.

Q. When was the last continuous stretch that you worked? A. 1927 to 1935.

Q. And in what time in between '35 was your employment with the company terminated? A. June 10th.

Q. Are you a member of the International Union of Mine, Mill and Smelter Workers? A. Yes, sir.

Q. And are you a member of Local No. 30? A. Yes.

Q. How long have you been a member? A. Since '33.

Q. Were you a member in June of 1935? A. Yes, sir.

Q. Were you aware on or about June 7, 1935, that a number of union men had been discharged from the employment of the company at the Cole shaft? A. Yes, sir.

Q. Do you remember about when they were discharged? A. (No response).

Q. Do you remember the day of the week? A. It was a Thursday, I believe.

Q. And do you know if the union took any action as a result of those discharges? A. Yes, sir.

Q. What action was taken? A. Called a special meeting.

Q. When? A. The day following the discharge.

*Edgar Lewis Hargus—For National Labor Relations
Board—Direct.*

Q. That would be on Friday? A. Yes, sir.

Q. And what was the purpose of that meeting? A. Well, they had——

Q. In other words, what was done at the meeting? A. Well, we taken a strike vote.

Q. And did you vote to strike or not to strike? A. Yes, sir, we voted to strike.

Q. And was the strike called? A. No.

Q. You mean you did not strike? A. Oh, yes, we taken a vote for the strike and it went over big.

Q. And did you actually strike? A. Yes.

Q. When? A. On June 10th.

Q. And what day of the week was that? A. That was on Monday.

Q. And was a picket line set up at that time? A. Yes.

Q. Were you on that picket line that day? A. Yes, sir.

Q. And what was the last day that you were on the picket line? A. I don't remember the day, but it was the last part of July.

Q. You were not on the picket line during August? A. No.

Q. And between June 10th and the latter part of July, were you on the picket line frequently? A. Practically every day.

Q. And during that period did you ever apply for work? That is, during the period that you were on the picket line. A. No.

Q. Do you know when the strike was called off? A. I believe August 24th; I am not sure.

Q. And since August 24th have you ever applied for reinstatement? A. Yes.

Q. When? A. Either the last part of October or November in 1935.

Q. Either the last of October or the first of November? A. Yes.

Q. And to whom did you apply? A. Mr. Bateman.

*Edgar Lewis Hargus—For National Labor Relations
Board—Cross.*

Q. And where? A. In the employment office.

Q. Was anyone present? A. No.

Q. What time of day was it? A. Somewheres around before noon; around 10:00 o'clock, I expect.

Q. And did you see Mr. Bateman in his own office? A. No, he was in the outer office there.

Q. In the outer office? A. I think he was just going off.

Q. And what did you say to Mr. Bateman? A. I asked him, "How's the chance to go back to work?"

Q. And did he make any reply? A. He says that—he said, "The company will never hire you, Ed, or none of the fellows that was on strike or on the picket line."

Q. Was anything further said by either of you? A. No, I just turned around and walked out.

Q. And have you applied at any time since then? A. No.

Mr. Persinger: I offer as Board's Exhibit 14 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 14.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 14.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Hargus, are you an employee of the Phelps Dodge Corporation? A. No, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Shattuck Denn.

Q. Shattuck Denn Mining Company? A. Yes, sir.

Q. What was the first employment that you obtained after you left the service of the company? A. Well, I worked about two weeks on relief—I worked on the relief.

*Edgar Lewis Hargus—For National Labor Relations
Board—Cross.*

Q. You worked on relief. For what period of time did you work on relief? A. I worked the latter part of June. I don't know just what time, and some of July; then I left.

Q. When did you leave? A. The latter part of July.

Q. Where did you go? A. Well, I went from here to California; from California to Nevada.

Q. Let me ask you, first: You went to California in the latter part of July, 1935. How long were you there? A. I was gone practically two months, I guess.

Q. Did you have any employment while you were there? A. No.

Q. Did you attempt to get employment in California?

A. Yes.

Q. Where did you try to get employment? A. Let's see. Well, we had started to Grass Valley. That is where we started, and we got to Sacramento and met some boys coming back from there, and they says it wasn't any use of going up there. They said they had been there and they wasn't hiring anyone, and they was laying off. So we didn't go on up there. We went down in Sacramento there in the employment offices. They have some employment offices there, and there wasn't anything there. So we left.

Q. Where did you go from there? A. To Nevada.

Q. Whereabouts in Nevada? A. Well, we went to—I can't recall the name now. It is down around the mountain district down there—Tonopah.

Q. Did you obtain employment there? A. No.

Q. Did you make any effort? A. Yes. We went down there, but their mine was closed.

Q. What was the first employment that you obtained after leaving the district in July of 1935? A. Asenada, New Mexico.

Q. For whom did you work there? A. I worked for some contractor on the Santa Fe Line there.

Q. What was your job? A. I was running the jack-hammer.

*Edgar Lewis Hargus—For National Labor Relations
Board—Cross.*

Q. How long were you employed at that job? A. About two and a half weeks.

Q. Would you give me again the date when you started on that job? A. I don't know the date.

Q. What month? A. September—August, I believe it was.

Q. August of 1935? A. The last part of August.

Q. Did you quit voluntarily at the end of the two weeks? A. Yes.

Q. What was your next employment? A. I come back and I worked for Hood Brothers.

Q. Whereabouts? A. Douglas.

Q. When did you start work with them? A. I don't remember. I don't know the month; it was right after I come back. Just as soon as I come back I went on the job there.

Q. When you came back from where? A. New Mexico.

Q. So it would probably be, then, in September of 1935? A. Yes, I think it was.

Q. You say you went to work for Hood Brothers in Douglas? A. Yes, sir.

Q. How long did you work with them? A. About a month.

Q. What was your job with them? A. Driving a truck.

Q. Did you leave that employment voluntarily? A. Yes.

Q. What was your next employment? A. I drove a truck for Pleasant & Hasler.

Q. Where did you have that job? A. Out here on this Fort Huachuca Road. And you started work on that in the Fall of 1935? A. Yes, sir.

Q. How long were you on that job? A. I think I started in December there and worked two months, I believe; practically that, anyway.

Q. Did you leave that job voluntarily? A. Yes, sir.

Q. That takes us, then, to 1936. What was your next employment? A. Shattuck Denn.

*Edgar Lewis Hargus—For National Labor Relations
Board—Cross.*

Q. With the Shattuck Denn Mining Company? A. Yes, sir.

Q. When did you start work for them? A. I don't—let's see. Either February or March of 1936.

Q. What job were you employed at with the Shattuck Denn Mining Company? A. Mining.

Q. Did you have regular employment with them? A. Yes.

Q. Have you worked for them continuously since that date? A. No.

Q. When did you leave your employment with the Shattuck Denn Mining Company? A. December.

Q. Of 1936? A. Yes.

Q. Did you leave your employment voluntarily at that time? A. Yes; I had a better job.

Q. What was your next job? A. For the Banner Mining Company in Lordsburg.

Q. In Lordsburg, New Mexico? A. Yes.

Q. What job did you have with the Banner Mining Company? A. Shift boss.

Q. How long did you work for them? A. Eight months.

Q. That is, then, from December, 1936, for a period of 8 months into 1937? A. Yes.

Q. Why did you leave that job? A. Got tired of it; I didn't like it.

Q. You left it voluntarily, did you not? A. Yes. I didn't like the location over there.

Q. What was your next employment, Mr. Crandal, after you left the Banner Mining Company? A. My name isn't Crandal.

Q. Excuse me. Mr. Hargus. A. I went to work at the Shattuck Denn.

Q. At what date did you go to work for the Shattuck Denn the second time? A. Let's see. I believe it was in October of 1937.

*Edgar Lewis Hargus—For National Labor Relations
Board—Cross.*

Q. Have you worked with them continuously since that date? A. Yes.

Q. Are you employed by the Shattuck Denn Mining Company now as a miner? A. Yes.

Q. You spoke of a meeting of Bisbee Miners' Union, Local No. 30 on the evening of Friday, June 7, 1935, did you not, in your direct examination? A. Yes, sir.

Q. How many were present at that meeting, Mr. Hargus? A. I couldn't say the exact number, but I would say between 75 and a hundred men.

Q. Were they all employees of Phelps Dodge Corporation? A. Yes, sir.

Q. Every one of them? A. I would say they were. I wouldn't swear to it.

Q. Do you know? A. I am sure they were. They had no other reason to be in there. They are not supposed to be there.

Q. Was the membership in Bisbee Miners' Union, Local No. 30, confined only to the employees of Phelps Dodge Corporation? A. No.

Q. Was this meeting called for only those members who were employees of the company? A. Yes sir. It was a special meeting.

Q. What notice did you receive of the meeting? A. I was told.

Q. By whom? A. By the President, Earl Morrison.

Q. What day was that? A. That was Thursday.

Q. What day did you say you talked to Mr. Bateman about employment? A. I didn't say any date.

Q. Well, approximately what time of the year, and what year? A. It was either the last part of October or along the first of November.

Q. Of 1935? A. Yes.

Q. Well, haven't you testified that you were out of the state at that time? A. No, sir.

*Edgar Lewis Hargus—For National Labor Relations
Board—Cross.*

Q. Where were you working at that time? A. I wasn't working. I had just come off this job from Hood Brothers.

Q. With Hood Brothers in Douglas? A. Yes.

Q. Did you go in to interview Mr. Bateman? A. That's what I went in for, but I met him in the outer office there.

Q. And you testified, I believe, that it was about 10:00 o'clock in the morning? A. Somewheres around that time.

Q. You are willing to state under oath that the statements that you have repeated that Mr. Bateman made are the truth? A. Yes, sir.

Q. How long were you in the picket line? A. From the 10th of June to the latter part of August—July.

Q. In that period of time, Mr. Hargus, were you mixed up in any fights in the district? A. Yes, I was.

Q. Were you at any time arrested? A. Yes, sir.

Q. What was the charge? A. Assault and battery.

Q. Upon whose person? A. A fellow by the name of Riley, I believe.

Q. Was he an employee of the company? A. Yes.

Q. Who was arrested with you at that time? A. Levi Crandal.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: No questions.

Q. (By Trial Examiner Kennedy) What was your pay at the respondent company at the time you were discharged?
A. \$5.00.

Q. \$5.00 a day? A. Yes, sir.

Q. What are you now drawing at the Shattuck Denn mine? A. \$5.48.

Q. Do you desire to return to the respondent company?
A. I don't quite understand you.

Q. Do you want to go back to the Copper Queen? A. Yes, sir.

Edgar Lewis Hargus—For National Labor Relations Board—Recross.

Q. Why? A. Well, I don't know. I have always worked for them ever since I have been here; that is, up until that time.

Q. You would rather go back there at \$5.00 than stay at your present job at \$5.48; is that right? A. No, sir; I would expect the same pay.

Q. You would expect \$5.48 if you went back to the Copper Queen? A. Yes, sir.

Q. But if you only got \$5.00 you would not want to go back? A. No, I wouldn't take anything under the scale.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: Nothing further.

Mr. Persinger: I have nothing further.

Trial Examiner Kennedy: Just one more question. Where is the Shattuck Denn mine?

A. It is northeast of Lowell.

Trial Examiner Kennedy: How far?

The Witness: I would say three-quarters of a mile, half a mile.

Trial Examiner Kennedy: That is all.

Mr. Kitchel: May I ask one more question?

Recross examination:

Q. (By Mr. Kitchel) You testified, Mr. Hargus, I believe, in August, 1935, you were employed by some contractors in New Mexico, running a jackhammer? A. Yes.

Q. What was the rate of pay that you received at that time? A. 60 cents an hour.

Q. And how many hours did you work per day? A. 9 hours, I believe. I am not positive, though.

Mr. Kitchel: That is all.

Mr. Persinger: That is all.

*John Henry Key—For National Labor Relations Board—
Direct.*

Trial Examiner Kennedy: You are excused. Do you want to recall this witness any further?

Mr. Kitchel: I don't believe so.

Mr. Persinger: I don't think we will recall him.

Trial Examiner Kennedy: You may stay in the courtroom if you desire to.

Mr. Persinger: Could we take a 5-minute recess?

Trial Examiner Kennedy: We will take a 5-minute recess.

(Short recess.)

Trial Examiner Kennedy: The hearing will be in session.

JOHN HENRY KEY, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name?

The Witness: John Henry Key.

Direct examination:

Q. (By Mr. Persinger) Mr. Key, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. I am not sure; it was around sometime in '28.

Trial Examiner Kennedy: Of 1928?

The Witness: 1928, yes.

Q. (By Mr. Persinger) And how long did you work continuously after your first employment? A. Up until that—the big slump.

Q. And when did you go back to the company's employ? A. Well, I went back somewhere in—I am not sure of the date—'31.

*John Henry Key—For National Labor Relations Board—
Direct.*

Q. And how long did you work? A. About a month.

Q. And did you go back again around '34? A. Around '34; yes.

Q. And how long did you work that time? A. Up until we came out on strike.

Trial Examiner Kennedy: Up until when? I can't hear you.

The Witness: Until we come out on strike.

Q. (By Mr. Persinger) Are you a member of the International Union of Mine, Mill and Smelter Workers, Local No. 30? A. I am.

Q. How long have you been a member? A. A very short while.

Q. You were not a member at the time of the strike? A. Yes.

Q. You were a member then? A. Yes.

Q. And were you present when a vote was taken to determine whether or not to go out on that strike? A. Strike vote?

Q. Yes. A. I was.

Q. Do you remember when that vote was taken? A. On the 7th of June.

Q. And how did the vote come out—that is, did you vote to strike, or not to strike? A. The vote come out to strike.

Q. And when did the strike actually take effect? A. The 10th of June.

Q. What day of the week was that? A. Monday.

Q. What was the first— Was there a picket line established? A. There was.

Q. What was the first day you were on the picket line? A. Monday.

Q. The first day of the strike? A. Yes.

Q. And when was the last day you were on the picket line? A. I think it was the 24th or 25th.

*John Henry Key—For National Labor Relations Board—
Direct.*

Q. Of what month? A. Of August.

Q. In other words, the last day of the strike? A. Yes; I was on it the last day.

Q. And between June 10th and the end of the strike, were you on the picket line frequently? A. I was.

Q. And at any time during the progress of the strike did you ever apply for work with the company? A. Along about two or three days before the strike was called off I was up at the employment office and applied that morning.

Q. And you applied to whom? A. Mr. Bateman.

Q. Where was he? A. He was standing out on the platform in front of the employment office.

Q. Were you the only person there? A. No.

Q. Were there other strikers present? A. Yes, sir.

Q. Were there other persons present who were not strikers? A. Yes, sir.

Q. Were you there when Mr. Bateman came out of his office onto the porch? A. I was.

Q. What did Mr. Bateman do when he came out? What did he say? A. Well, he came out on the platform and he looked around and looked the bunch over and he says, "Any miners in the crowd?"

Nobody spoke up for a second, and then Bill Day spoke up and he says, "I'm a miner. How about my job?"

And Mr. Bateman looks around and he says, "None of you fellows will ever go back to work for the company again."

And Mr. Bill Day, he asked him—he says, "Who do you mean by 'you fellows'?"

And Mr. Bateman, he says, "I mean you strikers."

Q. Was anything further said? A. That's all that I remember hearing.

Q. Well, did you actually apply for your job at that time? A. I spoke up, too, yes.

*John Henry Key—For National Labor Relations Board—
Direct.*

Q. When? A. The same time; right after Bill spoke up. There were 7 or 8 in the bunch that hollered out, too. I couldn't say for sure how many.

Q. And since the strike has been over, have you at any time applied for reinstatement? A. Yes, I have.

Q. When? A. About six months after it was over somewhere around there.

Q. Where did you apply? A. Mr. Bateman's office.

Q. Was anyone present? A. Not in the room, no.

Q. What time of day was it? A. I would say around between 8:30 and 9:00.

Q. In the morning or evening? A. In the morning.

Q. What did you say to Mr. Bateman? A. I walked in and I asked Mr. Bateman, "How about a chance to go back to work?"

And he spoke a few words—he says, "Well, Key," he says, "I'll take your case up." He says, "You come back within about a week and I'll let you know."

Q. Was anything further said at that time? A. No, that I remember.

Q. Did you go back in about a week? A. I did.

Q. Did you see Mr. Bateman? A. Yes.

Q. Where? A. In his office.

Q. Was anyone there at that time? A. Not that I remember; no.

Q. What did you say to Mr. Bateman at that time? A. I walked in. Mr. Bateman, he never said nothing. I stood there a few minutes, and I said—I spoke first. I said, "Well, Mr. Bateman," I said, "what did you find out?" "Well," he says, "I can't do a thing for you."

Q. Did you say anything? A. No. That's about all I said.

Q. Did he say anything else? A. No. He went right on writing, or whatever he was doing.

Q. Have you applied at any time since then? A. No, I haven't.

*John Henry Key—For National Labor Relations Board—
Cross.*

Mr. Persinger: I offer as Board's Exhibit next in order, the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 15.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Key, are you an employee of the Phelps Dodge Corporation at the present time? A. I am not.

Q. Are you employed at the present time? A. I am.

Q. By whom are you employed? A. Shattuck Denn.

Q. Shattuck Denn Mining Company? A. Yes, sir.

Q. Have you ever been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, I have not.

Q. When did you first commence work with the Shattuck Denn Mining Company? A. I am not certain what day; it was in September, 1935; sometime in September.

Q. September, 1935, was when you first went to work for the Shattuck Denn Mining Company? A. Yes, sir.

Q. On what job were you employed with them? Were you a miner? A. Excuse me; the first time was in '26.

Q. Well, I mean, subsequent to June 10, 1935, Mr. Key. And September, 1935, was the first time after June 10, 1935, that you went to work for the Shattuck Denn Mining Company? A. Yes.

Q. What was your job with them at that time? A. Shaft man.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. How long did you stay at work with them? A. Approximately about two and a half months, until they started concreting.

Q. Did you leave your job voluntarily at that time? A. I did.

Q. Were you employed at any time between June 10, 1935, and the time you went to work for Shattuck Denn Mining Company in September of 1935? A. I didn't get that.

Mr. Kitchel: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter as set forth above.)

The Witness: Well, no; September—two and a half months.

Q. (By Mr. Kitchel) Well, I am talking about prior to the time you went to work for the Shattuck Denn Mining Company. I will put it this way. Were you unemployed at all times between June 10, 1935, and September, 1935? A. No, I wasn't.

Q. What employment did you have in that period? A. I worked in a shaft in Idaho.

Q. In a shaft in Idaho? A. Yes.

Q. When did you start to work there? A. Around the 1st of February.

Q. Of what year? A. Of 1936.

Q. Well, I am still talking about 1935, Mr. Key. You have testified that you went to work for the Shattuck Mining Company in September of 1935. A. Yes.

Q. I am asking you whether or not you were unemployed from June 10, 1935, up until September, 1935? A. I was.

Q. You had no employment whatsoever? A. No.

Q. Did you work on relief during that period? A. No, that was afterwards; that was after I came back from Idaho, in '36.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. When you left your job with the Shattuck Denn Mining Company, as you have testified, after approximately two-and-a-half months, which would take up until November of 1935, where did you go then? A. In November? Well, I was around town here for quite a while, and then after I left the Shattuck Denn I went to Idaho.

Q. That was late in the fall of 1935? A. No, that was in about the middle of January, '36.

Q. Whereabouts in Idaho did you go? A. Sunshine Mine, Kellogg.

Q. Sunshine Mining Company at Kellogg, Idaho? A. Yes, sir.

Q. Were you employed as a miner by that company? A. I went to work in the shaft, shaft man.

Q. Is that your usual job, shaft man? A. No, it was up until after I come out on strike.

Q. How long did you work for the Sunshine Mining Company? A. About two months.

Q. Why did you leave there? A. It was too cold; I couldn't stand the cold.

Q. Where did you go from that job? A. Came back to Bisbee.

Q. What was your next job? A. I hired out to a leaser, Jim McKenna.

Q. Jim McKenna? A. Yes, sir.

Q. And what was your job with Mr. McKenna? A. Timberman.

Q. Approximately what date in 1936 did you go to work for Mr. McKenna? A. I couldn't say; I don't remember.

Q. Can you tell me approximately what time of the year it was? A. In May, I would say; I am not certain.

Q. Was the matter of getting a job during that period a matter of importance to you? A. It was. I needed it pretty bad.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. How long did you work for Mr. McKenna? A. Well, I think I worked two weeks.

Q. Did you leave that job voluntarily? A. I didn't.

Q. Were you discharged? A. Yes, sir.

Q. And what was your next job? A. Shattuck Denn.

Q. And what date did you commence working for them for the second time? A. Around the last of August, I believe.

Q. The last of August, 1936? A. '37.

Q. You haven't accounted for yourself during the year 1937 at all. Was it shortly after you were discharged from Mr. McKenna's employ? A. No; I rustled for a month and a half or better.

Q. You were in the district continuously for a month and a half after you ceased working for Mr. McKenna? A. I was.

Q. And then you went to work for the Shattuck Denn? A. I did.

Q. That would be, then, in the month of August, 1936, would it not? A. '36.

Q. And have you worked for the Shattuck Denn since that time continuously to date? A. I have.

Q. And you are employed by the Shattuck Denn Mining Company at the present time? A. I am.

Q. Is it not a fact, Mr. Key, that you went to work for the first time, after June 10, 1935, with the Shattuck, Denn Mining Company on August 27, 1935? A. I am not certain of them dates.

Q. You have testified that the picket line was disbanded on August 25. You were very definite on that date. Now, can't you put your mind on three days later and tell me whether or not that is not a fact? A. Just right around the 24th or the 25th, but I am not sure on that date.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. Well, how many days after that was it that you went to work for the first time at the Shattuck Denn? A. I could not tell you.

Q. Was it a matter of days or a matter of weeks? A. It seems to me like it was a couple of weeks. It seems that way.

Q. Your memory is a little bit short on these dates of employment, isn't it? A. I am a very poor hand at remembering dates.

Q. But your conversations, you remember them quite clearly, don't you? A. Some of them I do.

Q. Did you leave for Kellogg, Idaho, immediately after you left the employ of the Shattuck Denn the first time? A. There was a day or two in there that—

Q. You left a day or two after you left the Shattuck Denn? A. Yes.

Q. Which was in February, 1936? A. I think it was in January.

Q. Around January or February? A. Yes—well, no, it was around in January.

Q. Did you leave the Shattuck Denn Mining Company for the purpose of going to Kellogg, Idaho? A. No, at that time I didn't.

Q. Why did you give up your job at the Shattuck Denn? A. Concrete—you can't work around—I can't work around concrete. It poisons my blood, I guess. Big boils break out on me.

Q. You stated on direct examination that approximately six months after the end of the strike you went to see Mr. Bateman on a certain morning; is that correct? A. Somewhere around six months; yes.

Q. Was that before or after you went to Kellogg, Idaho? A. That was a few days after I came back from Idaho.

Q. How long were you in Idaho? A. A few—I worked there about two months at the Sunshine.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. Can you tell us the day of the week that you called on Mr. Bateman? A. No, I couldn't.

Q. Can you tell us the month? A. No, I couldn't.

Q. Can you tell us the year? A. '36.

Q. And then it was after that visit to Mr. Bateman's office, you testified you went to work for Mr. McKenna? A. I don't remember.

Q. How many members of Bisbee Local No. 30 were present at the meeting June 7, 1935? A. Well, I couldn't say for sure. I would say around between 90 and 100; somewhere around there.

Q. Between 90 and a hundred? A. Somewhere around a hundred.

Q. How did you happen to go in to see Mr. Bateman about six months after the end of the strike? Were you standing outside of the office, and were you called in? A. No, sir.

Q. Did any others go in to see him at that time? A. I wasn't until the bunch left. There were a few around there; two or three, I believe, rustling.

Q. What time of day did you say it was? A. Around 9:00 o'clock.

Q. 9:00 o'clock in the morning? A. I think there were two there that morning; two or three.

Q. Will you speak that again, please? A. I did not hear you. A. I believe there were two or three men there that morning rustling.

Q. Two or three rustling? A. Yes.

Q. Do you know of anybody being hired that morning? A. I don't know.

Q. Was anybody present with you when you spoke to Mr. Bateman? A. No, sir.

Q. Was anybody else with Mr. Bateman? A. No, sir; not that I remember.

Q. Where did you live during the strike, Mr. Key? A. I stayed with my folks most of the time.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. Where did they live? A. They lived just out of the town on a little ranch.

Q. Did they live anywhere near what is known as the "Seven Mile Bridge"? A. I never heard of that.

Q. Well, the bridge on the highway that goes to Elfrieda, about 7 miles out of the district here? A. No; just down at the canyon, my folks live.

Q. What is that again? A. They live just out of the canyon—my folks live.

Q. In the valley? A. Right at the head of the mountains; right at the foothills of the mountains.

Q. Are you acquainted with some men called "Gojkovich"? A. You mean Gockovich?

Q. Gockovich, it is. A. Yes, I am.

Q. Are they employees of the company? A. (Pause).

Q. Let me ask you if they were employees of the company in June and July of 1935, if you remember? A. Well, I don't believe they was. I don't remember.

Q. You don't remember. You don't know whether or not they were employed? A. No, I don't.

Q. Do you recall any occasions during the course of the strike and when the picket lines were established of men being held up and attempts made to stop them from getting out to their jobs right near your house? A. I do not.

Q. You have no recollection of that? A. No.

Q. Have you any recollection of any shootings? A. No.

Q. Isn't it a fact, Mr. Key, that you yourself shot a hole through a car in which the Gockovich boys were riding when they were on their way to work? A. No, sir; I did not.

Q. You deny that? A. I deny it.

Q. What type of work are you doing for the Shattuck Denn at the present time? A. Drift work.

Q. Employed as a miner? A. Machine man.

Q. Machine miner? A. Yes.

Mr. Kitchel: That is all.

Mr. Persinger: No further questions.

*John Henry Key—For National Labor Relations Board—
Cross.*

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You say you are now a machine miner with the Shattuck Denn? A. Yes, sir.

Q. What job did you have when you left the Copper Queen? A. Was a raise man and stope man, making raises and stopes.

Q. What pay did you get at the time you left the Phelps Dodge? A. \$5 a day.

Q. What pay are you getting now? A. \$5.48.

Q. When did you first get more than \$5 a day with your present employer? A. The Shattuck Denn?

Q. Yes. When? A. September

Q. September of 1937? A. 1935.

Q. In September of 1935? A. Yes.

Q. Have you continuously drawn that much pay since that time? A. No. It has been up and down.

Q. Has it ever been less than \$5 a day? A. No.

Q. Have you been continuously employed by Shattuck Denn since September, 1935? A. I have not.

Q. When was the last time that you started to work for Shattuck Denn? A. I can't say for certain.

Q. Well, has it been within the last six months? A. No I worked—spent over a year.

Q. You have been working there over a year continuously? A. Yes.

Q. Longer than December of 1936? A. Yes. I would say it was a little over.

Q. Since December 1st, 1936, you have been working continuously with Shattuck Denn, is that right? A. Yes.

Q. And all of that time you have drawn more than \$5 a day. Is that correct? A. Except the days I was off,—the days I worked there.

Q. Well, what is the average number of days that you have worked? What has been your average work in that period of time? A. Drifting.

*John Henry Key—For National Labor Relations Board—
Cross.*

Q. No. What do you average a week? How many days a week? A. I average about six.

Q. About six days a week since December 1, 1936? A. Yes.

Q. What did you average for the last year that you worked for the Phelps Dodge? How much time a week? A. Five days.

Q. About five days. So you have been employed more steadily with Shattuck Denn than you were with Phelps Dodge in this last year? A. Yes.

Q. Do you want to go back to Phelps Dodge? A. Well, I would rather, yes.

Q. Why? A. Well, I have a family to feed, and it is the best place to work. I figure a man can live longer and it's more sure of your job. Shattuck Denn—you may have a job today, and it is a small outfit, and they may be closed down next week.

Q. Would you rather go back to Phelps Dodge at \$5 a day than to stay at Shattuck Denn at \$5.48? A. Well, they are paying the same now as the Shattuck Denn.

Q. They are now paying the same? A. Yes.

Q. Paying \$5.48 now? A. Yes, sir.

Q. Well, supposing you have to go back at \$5. Which would you rather do?

Mr. Persinger: I submit, Mr. Examiner, that is an unfair question.

Trial Examiner Kennedy: I want the opinion of the witness.

The Witness: Well, I would be more sure of a job longer if I went back.

Q. (By Trial Examiner Kennedy) Well, which would you take? A. Well, I guess I'd take the job back.

Q. With Phelps Dodge? A. Yes.

Proceedings.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: What was the answer?

Trial Examiner Kennedy: Read the answer, Mr. Reporter.

(The answer referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: Any further questions?

Mr. Persinger: Nothing further.

Mr. Kitchel: I have nothing further.

Trial Examiner Kennedy: Will this witness be permanently excused?

Mr. Kitchel: I have nothing further from the witness.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are permanently excused. You may remain in the room if you desire. This will be off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record. We will be in recess until 1:30 this afternoon.

(Thereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p. m. of the same date.)

AFTER RECESS.

(The hearing was resumed, pursuant to the taking of recess, at 1:30 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger, for my information I would like to ascertain the Board's theory as to some of these witnesses who have testified they have been discharged. For example, the last one, Mr. Key; I would like to

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Direct.*

ascertain whether or not the Board maintains that he has not obtained other regular and substantial equivalent employment.

You do not have to answer that at this time, if you do not wish to, but I would like to get your theory on it.

Mr. Persinger: I think, as Mr. Key suggested, for one thing, the Shattuck Denn mine is a smaller outfit and does not have the regularity of operations that a large outfit such as the Copper Queen does have; and I have not given any particular thought to analyzing the various reasons for the position the Board takes. I would rather make a more complete answer at a later time.

Trial Examiner Kennedy: We will assume, until the matter is finally disposed of, that the Board takes the position, then, that at least as to Mr. Key, that he has not obtained substantially equivalent employment?

Mr. Persinger: Yes.

Trial Examiner Kennedy: All right. Proceed.

Mr. Persinger: Mr. Fisher, will you take the stand, please?

J. W. FISHER, a witness called on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: J. W. Fisher.

Direct examination:

Q. (By Mr. Persinger) Mr. Fisher, are you employed by the Phelps Dodge Corporation? A. Yes, sir.

*J. W. Fisher—For National Labor Relations Board—
Direct.*

Q. In what capacity? A. Foreman.

Trial Examiner Kennedy: What was that?

The Witness: General foreman.

Trial Examiner Kennedy: Speak out so that everybody can hear.

Q. (By Mr. Persinger) Over what division are you general foreman? A. The Junction, the Campbell and the Cole shaft.

Q. How long have you held that position? A. Three years.

Q. How long have you held that position? A. Three years.

Q. Three years? A. Yes, sir.

Q. Do you remember the date when you became general foreman? A. Oh, approximately the 21st of January.

Q. Of what year? A. 1935.

Q. What, briefly, are your duties as to the general foremanship? A. Well, I have assistant foremen with me, and shift bosses. My duty is general underground work over the three shafts.

Q. In your capacity as General Foreman, do you have anything to do with the promotion of a man, say, from mucker to miner? A. No, very little. That is done by the shift bosses and the foremen of the different divisions.

Q. They normally would not consult you on that? A. That is very seldom taken up with me.

Q. Would you be notified of such changes? A. Not always, no.

Q. Now, in the case of a transfer of a man from one shaft to another: I believe the request comes to you, does it not? A. In some cases, yes. The foreman of a different shaft might ask me for so many men, and in some cases he would go to the foreman of another division, another shaft, and that foreman, in turn, would go through his shift bosses, for so many men. They get the first order from me.

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Direct.*

Q. In other words, under all conditions you would not yourself select the men to be transferred? A. Not individually, no.

Q. Well, now, when transfers are made to the Cole shaft, I believe they were made off and on over a period of about 12 or 14 months after the shaft opened? A. Yes.

Q. Now, who selected the various men to be transferred to the Cole shaft? A. Well, the first operation there I think was the repairing of the Cole shaft. That is, they got that finished, started to clean up, open up their mine, and they required a crew to do it. They had to get an organization over there, and those men were sent from the Campbell, from the Junction, which were the only two operating shafts at that time, I think.

Q. Do you know who did the actual selecting of the men? A. The foremen and shift bosses, I think, would be asked for men. Mr. Ratteree, I think, was the foreman at the Cole shaft. That is, he required it, required men to start his work and he would ask for so many men.

Q. And do you know if that same method of transferring men was used up until the 1st of June of 1935? A. I think that is always been the practice.

Q. Did you yourself receive any orders concerning the selection of men to be transferred to the Cole shaft between June, 1934, and June, 1935? A. Any specific orders for particular men?

Q. Or any orders about how you should select particular men? A. Well, when you ask a foreman of a shaft to transfer so many men, we will say a dozen men, you tell him that you want so many muckers, so many miners, some machine men in that bunch. If they are not picked by the man that is going to work them in another shaft, naturally the man that is going to send those men are going to send the man that he doesn't need. The weak ones will come first. You would naturally see the way clear to get rid of those men; let somebody else have them. That is only a natural condition.

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Q. Now, in June of 1934, several men were transferred from A and B divisions to the Cole shaft. Their names were Charles Toops, A. B. Potter, Carl C. Cook, Robert L. Powell, Albert E. Garland, V. C. Crandal, J. L. White, Frank C. Bailey, Thomas A. Brown, P. C. Lytle, Joe T. Woods, and Thurman W. Pruitt. Now, at that time did you personally know any of those men? A. Oh, yes.

Mr. Kitchel: I object to that question, Mr. Trial Examiner. I can't see that there is any relevancy, any need for going into the names of any individuals in July, 1934; it has no bearing on any of the issues in this case.

Mr. Persinger: If the Examiner please, those individuals were also in the Cole shaft in June of '35, and I don't remember whether I read the names of any one of the eight who were discharged, or not.

Trial Examiner Kennedy: Are they all included in the complaint, and were later discharged?

Mr. Persinger: They are not included in the complaint, but they were all members of the Union. In fact, I intend to show that on May 29, 1935, there were 66 men in the Cole shaft, and out of those 66 men, 62 were union men, four non-union men.

Mr. Kitchel: That might be true all throughout the mine, so far as that is concerned.

Trial Examiner Kennedy: If it showed any background in the complaint of discharges I would let it go in.

Mr. Persinger: It shows the background leading up to those discharges. At least, that will develop, I hope.

Mr. Kitchel: Mr. Examiner, I don't believe any foundation has been laid for that at the present time.

Trial Examiner Kennedy: I will let it go in subject to a motion to strike if it is not connected up. Is the answer to the question in, Mr. Reporter?

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The Reporter: Yes.

Trial Examiner Kennedy: Read the answer, please.

(Whereupon the answer was read by the Reporter as above recorded.)

Q. (By Mr. Persinger) And did you know at that time that those men belonged to the Union? A. No, I had no way of knowing that they belonged to the Union. They never furnished me with any list of their membership.

Q. Your answer is that you did not know? A. I had no way of knowing, I say.

Q. Yes, but did you know? A. No, I could not say that I knew. I had no way of knowing, so I didn't know.

Q. Now, did you personally select any of those men to be transferred? A. That is some time ago; that is three or four years ago, isn't it?

Q. I know it. A. Three years ago. I can't say that I did.

Q. You don't remember whether you did or not? A. I couldn't say that I particularly picked any one of those men for transfer. In transferring, like I said, there is a great many men involved.

Q. Could you say that you did not pick any of them? A. No, I couldn't say that exactly. The chances are I did pick some of them.

Q. Did you at any time give any instructions to any foreman or shift boss to select union men to be transferred to the Cole shaft? A. No, sir.

Q. Did you at any time receive instructions from any of your supervisors to select union men to be transferred to the Cole shaft? A. No, sir.

Q. And the fact that substantially all who were transferred were union men would merely be a coincidence, is that correct? A. I would think so.

Q. What are the usual reasons for discharging men? A. Oh, there are a great many; sometimes dangerous men

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—men that do not work safely; other times men fail to do their work. There are so many reasons that it would be hard to mention them all, but those are the main reasons.

Q. Who customarily recommends discharge? A. The shift boss and foreman, and sometimes the general foreman.

Q. In case the shift boss should recommend the discharge of a man, to whom would he give that recommendation? A. He would discharge the man.

Q. He would just discharge the man? A. He wouldn't have to take it up with anybody. He has that authority.

Q. Would he normally inform his foreman or you? A. He might take it up with his mine foreman—that is, the shift foreman of that division. It wouldn't necessarily reach me at all.

Q. Would he necessarily take it up with his foreman? A. Yes, very often.

Q. Yes. A. It is in very rare cases where a shift boss discharges a man without a lot of warning and taking it up with his superior.

Q. Have you ever discharged a man without the foreman or the shift boss saying anything to you about it? A. Have I?

Q. Yes. A. Yes, sir.

Q. When a man is to be discharged, is any notice given to him in advance that he is going to be discharged? A. No, no. He's warned on different things, but you don't tell him today that he is going to be discharged next week or the week following. We don't do that.

Q. What is this warning that you speak of? Is that spoken to him, or is it a written notice. A. Oh, no; it is a written sheet. There is a written notice sent to him for violations of safety work and sometimes laying off too much and not tending to his work.

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Direct.*

Q. Who makes out those warning notices? A. The shift boss makes those out, and they are signed by the foreman of the shaft.

Q. What sort of a notice does a man receive when he is actually discharged? A. A time sheet to the employment manager.

Q. Who makes out the time slip? A. That's made out by the shift boss, signed by the foreman.

Q. Normally in such a case as that, where the shift boss makes out the time slip, the foreman signs it, the shift boss gives it to a man and says, "You are discharged"? A. Sometimes the foreman discharges and makes it out himself. It is not always the shift boss.

Q. You need not know about that until some time later? A. No. In lots of cases like that it doesn't reach me at all. Sometimes a man comes to me about that and has his hearing. Very often they are put back to work.

Q. Did you know Mr. Bill Day? A. Yes.

Q. Do you remember that he was discharged about the 6th of June, 1935, just a few days before the strike? A. The 6th of June?

Q. Yes. A. I think he was one of several who were discharged.

Q. About eight men? A. Eight of them?

Q. Did you know that any of those men were going to be discharged? A. No, I didn't.

Q. You were not consulted about those discharges? A. No. At that time there was discussions amongst the bosses, the managers. We were having some little trouble over there.

Q. You yourself were not in on those discussions? A. Yes, I was.

Q. You were? A. Yes, sir.

Q. Do you know when those discussions began; how long before the discharges, that is? A. About the day before.

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Direct.*

We had some trouble over there and thought we would clear it up.

Q. Do you remember what the trouble was? A. The foremen—oh, yes. There was a report that reached us from the foremen and shift bosses that barking, yelling—

Q. What? A. Barking—one bunch of men barking at others and threatening them, shutting water off, pushing them off the cage, and things like that, and we sought to clear up that situation. After talking to Mr. Ratteree, getting the names of the different ones to let those six or eight, or whatever you say there were—

Q. Eight, I believe. A. —go, and he said we were having to clear out the 66 men that had come to a show-down—who were going to run the Cole, the management or just these few men that were very badly dissatisfied. We sought to clear it up by letting those men go. It did clear up the next day. Things were quiet.

Q. Ominously quiet, were they not? A. No. There was still 58 or 59 men working the next day.

Q. And Mr. Ratteree actually selected the men who were to be discharged from the Cole on that occasion? A. No, Mr. Ratteree didn't. They were talked over with Ratteree and myself and the management.

Q. Who told you, and who told the management, which men had been doing the pushing and which men had been doing the barking and shutting off the water? A. We got those complaints in many ways. Mr. Ratteree—

Q. How is that? A. Mr. Ratteree—

Q. He gave you some of the information? A. He was the foreman of the shop at that time, and he said that was about the—

Q. In other words, Mr. Ratteree then told you the names of the 8 men who were doing most of the pushing? A. No; there was a lot more mentioned.

Q. How is that? A. There was several others mentioned.

*J. W. Fisher—For National Labor Relations Board—
Direct.*

Q. Do you remember how many were mentioned, approximately? A. No, I couldn't say; too far to go back.

Q. I know. But you didn't discharge all the men whose names were mentioned in that connection, is that right? A. I couldn't say that. I don't remember for sure whether there was many more mentioned or not, but I think there was. There were those that were discharged or picked out by Mr. Ratteree and myself for the management. It was to clear up this.

Q. What I was trying to get at is, out of what group did you pick those names? A. Out of the whole mine.

Q. Out of the whole mine? A. Yes.

Q. How did you go about picking them? How did you select Day rather than John Smith or someone else? On what basis did you select them? A. Well, those that had been causing trouble over there; very dissatisfied; a very bad condition existed at that time. Like I say, it was a case of move six or eight of them, or maybe more, to clear that up—either that or close down.

Q. What I want to know is, you say you selected those who had been doing most of the pushing, most of the barking? A. That's the way it came to us from the foremen and other supervisory forces.

Q. In other words, Mr. Ratteree and other shift bosses under him gave you the names of the men who had been doing most of the pushing and the barking? A. Yes.

Q. Who were the shift bosses under him at that time, if you remember? A. I think there was a man named Ridgeway, Clarence Ridgeway.

Q. Were there any others? A. That is the only one who is here now. Yes, there was one named Pomeroy.

Q. And he is no longer with the company? A. No, not at that shaft. He is at Sacramento.

Q. Is Mr. Ratteree still with the company? A. No, he is not. Mr. Ridgeway is, though.

*J. W. Fisher—For National Labor Relations Board—
Direct.*

Q. You said you had a conference with the management. What individuals were present? A. Mr. Henrie, Captain Hodgson,—J. P. Hodgson.

Q. He was the General Superintendent? A. He was the General Manager at that time; Mr. Barkdoll.

Q. Any others? A. That is all.

Q. Those three and you and Mr. Batteree? A. Yes.

Q. In other words, it was another case of where it was dangerous and inefficient to have men working in one place that couldn't get along; is that right? A. Very much.

Q. Isn't it the job of the shift boss to tell a man where to work today and just what jobs to do today? A. Yes, sir.

Q. And the man has to obey the shift boss's instructions, I suppose? A. Yes, sir.

Q. And if he didn't, I imagine he would be fired or transferred or something like that? A. Oh, not always.

Q. Just reprimanded? A. Yes, talked to, hired over again.

Q. Who tells the tool nipper where to go to get the drills that are being used? In other words, how does he know where each person is drilling? A. Well, the miners very often do that, and tell them they are short of stuff; shift bosses, also.

Q. In other words, there is no regular schedule handed to him that so-and-so will be working in this shaft today, so go to him and tell him where he will need the tools? A. Oh, I think there is always lots of tools in a place; it is only a case of transferring the dull stuff away and taking the sharp stuff in to them.

Q. About May 30th a man named Erik Wahlgren and another gentleman, J. L. Kimbrough were transferred to the Cole shaft on May 31st—this was in 1935—May 31st, T. A. Hightower and Austin W. Furr and Albert Boekman were transferred, and on June 1st Gabriel Villa was transferred. Now, do you know those man, or any of them? A. I knew all of them but the last one— Who was that?

*J. W. Fisher—For National Labor Relations Board—
Direct.*

Q. Gabriel Villa. A. I don't know him.

Q. Do you remember whether you selected any of the first-named to be transferred? A. Of those five, I couldn't say that I did. I think most of them came—no, some of them came from the Campbell, and the others from the Junction. I may have, with the help of the foreman at that shaft.

Q. When did you first find out that most of the men in the Cole shaft were members of the Union? A. I didn't find out.

Q. Didn't you find out? A. I didn't ever say that I found out.

Q. Didn't you find out when the strike occurred whether most of them belonged? A. Yes, I found out then.

Q. And had you not known it at any time before? A. I had no way of knowing at that time that they were all union men because I was never furnished a list of union men or anything like that. You can think certain things, but for me to get up and say that I knew it wouldn't be so; I didn't know it.

Q. Well, did you know that those men that I last read were names of men, none of whom belonged to the Union? A. No, I didn't. There might be some of them that belonged, that I knew at that time.

Mr. Persinger: I believe that is all.

Mr. Kitchel: No questions.

Trial Examiner Kennedy: Do you wish this witness again on either side?

Mr. Kitchel: I think, in view of the line of testimony that has come out, that Mr. Fisher will very likely be called for the respondent.

Trial Examiner Kennedy: You are temporarily excused, Mr. Fisher, and you will not remain in the courtroom.

(Witness temporarily excused.)

*George Frazee—For National Labor Relations Board—
Direct.*

GEORGE FRAZEE, a witness called by and on behalf of the National Labor Relations Board, being first, duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: George Frazee.

Direct examination:

Q. (By Mr. Persinger) Mr. Frazee, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. March, 1934.

Trial Examiner Kennedy: Speak out now so everybody can hear you. '34, was that the date?

The Witness: Yes.

Q. (By Mr. Persinger) On what job were you employed?

A. Mucker.

Q. And you worked how long? A. A little over a year.

Q. When did you stop work for the company? A. June 10, 1935.

Q. And just before June 10th, what job did you have?

A. Miner.

Q. And did you go out on strike? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the first day you went on the picket line?

A. June 10th.

Q. And do you remember the last day you were on the picket line? A. It was the last day of the strike.

Q. And were you on the picket line more or less continuously between June 10th and August 24th? A. Just about every day.

Q. Did any official of the company, during the time you were on the picket line, ask you to come back to work? A. Yes, sir.

*George Frazee—For National Labor Relations Board—
Direct.*

Q. Who? A. Mr. Bateman.

Q. And when did he ask you? A. Well, two or three days after the strike started.

Q. And where were you? A. In the picket line.

Q. Yes, but where was the picket line? A. Up on the Junction, along the Junction Road there around the employment office.

Q. In the vicinity of the employment office? A. Yes, sir.

Q. And where was Mr. Bateman? A. Well, he was on the steps that leads into the employment office.

Q. And what did he say? A. He says, "If you boys don't go back to work tomorrow you will never work for the company again."

Q. Did you go back to work the next day? A. No, sir.

Q. Well, during the time that the strike was in progress, that is, between June 10th and August 24th, did you at any time apply for work with the company? A. No.

Q. Did you ever hear any other pickets apply for work? A. Yes, sir.

Q. When? A. Well, just before the strike was over.

Q. And where was it? A. In front of the employment office.

Q. And to whom did they apply? A. Mr. Bateman.

Q. Where was he? A. On the porch in front of the employment office.

Q. And were there any persons there who were not pickets? A. Oh, yes.

Q. What did Mr. Bateman say or do? A. Well, he came out there and he asked if there was any miners in the crowd, and nobody answered for a minute, and then Bill Day spoke up and said, "Sure, I'm a miner. How about my job back?"

And there were several of them spoke up. I don't know just who they were.

Q. Did you speak? A. No, I didn't, and he said—

*George Frazee—For National Labor Relations Board—
Cross.*

Q. Who is "he"? A. Mr. Bateman. He says, "None of you fellows that went out on strike will ever be able to work for this company again."

Q. Was anything further said? A. Not to my knowledge.

Q. That is all you remember? A. Yes, sir.

Q. And since that time have you ever applied for work?

A. No, sir.

Q. Why not? A. Well, that is the reason. They told us we would either go back to work or we couldn't work, and then he said, "Any of you boys that was out on strike can't go back," so I didn't see any use for us.

Mr. Persinger: I offer as Board's Exhibit next in order the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: What is the number?

The Reporter: No. 16.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 16.

(Whereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 16.).

Mr. Persinger: Take the witness.

Cross-examination:

Q. (By Mr. Evans) You are not employed by the Company at the present time, Mr. Frazee? A. No, sir.

Q. You haven't been an employee of the company since June 10, 1935, have you? A. No.

Q. At the time you walked out on June 10, 1935, were you employed as a mucker or as a miner? A. As a miner.

Q. You were doing mucker's work, however, were you not? A. No, sir.

Q. What rate of pay were you getting? A. I was getting 62½ cents an hour.

*George Frazee—For National Labor Relations Board—
Cross.*

Q. How much a day? A. \$5.00.

Q. \$5.00 a day? A. Yes, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. Who are you working for? A. Shattuck Denn.

Q. How long have you been working for the Shattuck Denn? A. It will be year the 15th of this month—next month.

Trial Examiner Kennedy: A little louder, please.

The Witness: It will be a year the 15th of February.

Q. (By Mr. Evans) Since February 15, 1937? A. Yes, sir.

Q. What type of work are you doing there? A. Mining.

Q. How much pay are you receiving? A. \$5.48.

Q. You are working full time, are you not? A. Yes, sir.

Q. And you have been continuously employed at the Shattuck Denn since February, 1937? A. Yes, sir.

Q. Where did you work before you worked at the Shattuck Denn? A. Gunnquely Coal Company at Rock Springs, Wyoming.

Q. What was the name of the company? A. Gunnquely.

Q. You might spell that, if you will. A. Gunnquely.

Q. And what is the rest of the name? A. Coal Company.

Q. Coal Company? A. Yes.

Q. When did you—Where was that? A. In Hot Springs, Wyoming.

Q. When did you go to work for that company? A. Why?

Q. When? A. Well, I worked for them twice. I went to work for them in November, 1934.

Q. How long did you work for them at that time? A. About two months.

Q. Did you leave your employment there voluntarily? A. No, I got laid off.

*George Frazee—For National Labor Relations Board—
Cross.*

Q. And then what did you do? A. I come back here.

Q. Did you receive any employment between the time you were laid off with that company and the time you went back to work with them again? A. Yes.

Q. For whom did you work? A. Oh, odd jobs. I worked on a few road projects.

Q. Whereabouts? A. Well, one of them out here at Elfrieda.

Q. How long did you work on those projects? A. About two months on this certain one.

Q. When did you go back to work with the coal company in Wyoming? A. The next October, 1936.

Q. In October of 1936? A. Yes.

Q. What type of work did you do when you went to work with the company in October of 1936; that is, the coal company? A. Mucking. They call them loaders there.

Q. Loading? A. Yes.

Q. Mining work? A. Just loading.

Q. What pay did you receive? A. \$6.86.

Q. A day? A. Yes, sir.

Q. I don't quite recall when you said you left their employ the first time when you were laid off. A. I worked for them about two months.

Q. So that you were laid off there, then, in about December of '35? A. Well, close to the first of 1936.

Q. Close to the first of the year? A. Yes.

Q. From that time you engaged in various types of work around Cochise County? A. Yes, sir.

Q. Were you employed fairly continuously during that period until you went back to work for the coal company? A. No, sir.

Q. How much time all together did you work? A. I couldn't say for sure.

Q. Have you any idea as to rate of pay you received on the various jobs? A. I received the state scale driving a truck for the contractor.

*George Frazee—For National Labor Relations Board—
Cross.*

Q. Driving a truck for the contractor? A. Yes.

Q. How much was that? A. 68¾, I believe.

Q. What? A. 68¾, I believe.

Q. 68¾ cents an hour? A. Yes, sir.

Q. How many hours would you work? A. Oh, about six hours a day.

Q. Did you ever work eight hours a day? A. Not very often.

Q. Did you at times? A. Once in a while. It was always deducted.

Q. What did you do from August 24th, 1935, until November, '35, when you went to work for the coal company? A. Well, I worked on relief a few months a few times.

Q. In Cochise County? A. Yes.

Q. How many days a week did you work there? A. Well, I don't think I can remember how much it was.

Q. Did you have any other jobs other than relief work during that period? A. No, sir.

Q. Now, at the time that you say you were on the picket line about August 21st, a few days before the strike, you were picketing at that time, were you not? A. Yes.

Q. The strike was still in progress, was it not? A. Yes.

Q. You had no intention of going back to work at that time, did you? A. If I could, I would have.

Q. The strike hadn't been called off, had it? A. We knew we lost.

Q. You knew you lost? A. Sure.

Q. Isn't it a fact, Mr. Frazee, that from time to time during the strike the pickets would congregate around at the employment office and in more or less of a razzing way ask about their jobs or their work? A. Not that I know of.

Q. Didn't they try to prevent employees from going to work? A. Only to speak to them.

Q. Didn't you speak to men in the rustling line? A. Spoke to them, yes.

*George Frazee—For National Labor Relations Board—
Cross.*

Q. Did you say anything to them about your jobs? A. Certainly.

Q. You mentioned your jobs to Bateman from time to time when he would come out, would you not? A. I never did.

Q. You have heard others do it, however? A. I wouldn't say.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When you went to work for the Wyoming mine the first time, did you go there with the understanding that you were being permanently employed? A. Well, I didn't have an understanding.

Q. You did not? A. No, sir.

Q. What was your understanding? A. Well, I just asked for a job, and I got it.

Q. Was anything said about how long you would be there? A. No. They hire and lay off, as they call it, during the Wintertime. That's the only time we work—is in the Wintertime.

Q. The only time you work is in the Wintertime? A. Yes, sir.

Q. And you went back there the next Winter? A. Yes, sir.

Q. How long did you work that time? A. About the same amount of time.

Q. About two or three months? A. About two months.

Q. And you knew at that time that they only employed people in the Wintertime? A. Yes, sir.

Q. What are you doing over here at this Shattuck Denn Mine? A. Mining.

Q. Were you classified as a miner at the Phelps Dodge Mine when you left there? A. Yes, sir.

*George Frazee—For National Labor Relations Board—
Recross.*

Q. You are getting \$5.48 a day now? A. Yes, sir.

Q. If you had a choice between that job and the one that you had at the Phelps Dodge mine, which one would you take? A. I am trying to get my old position back.

Q. You would rather go back to Phelps Dodge? A. Yes.

Q. Would you rather go back at the rate of pay you earned at the time you left Phelps Dodge, than stay where you are now? A. Yes.

Trial Examiner Kennedy: You would.

That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Evans: I have one more question.

Recross examination:

Q. (By Mr. Evans) Mr. Frazee, you were earning \$5.00 a day when you walked out on June 10th? A. Yes, sir.

Q. You are earning \$5.48 a day now? A. Yes, sir.

Q. You would rather go back to work for \$5.00 a day, would you? A. I am only trying to get my old position back.

Q. I didn't ask you that. You would rather go back to work for Phelps Dodge at \$5.00 a day, than to continue to work for Shattuck Denn at \$5.48? A. Yes, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further, gentlemen?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you expect to call this witness again?

Mr. Persinger: No, I don't expect to.

Mr. Kitchel: No.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Mr. Persinger: Mr. Foley, will you take the stand, please.

John Patrick Foley—For National Labor Relations Board—Direct.

JOHN PATRICK FOLEY, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: John Patrick Foley.

Direct examination:

Q. (By Mr. Persinger) Mr. Foley, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. Well, I was employed in 1926 by the C & A Mining Company, and they merged in '31.

Q. You worked continuously— A. To January 15, 1935.

Q. You worked continuously from '31 to January 15, '35? A. Yes sir.

Q. What was the occasion of your leaving the employ of the Company in January, '35? A. Well, I had no occasion to leave it, but the pressure was brought on me until I had a chance to go to work in California.

Q. You went to work in California? A. Yes, sir.

Q. When did you come back to Bisbee? A. I come back into Bisbee May 30, 1935.

Q. At that time did you attempt to get a job? A. Yes, sir.

Q. With Phelps Dodge? A. June 1st I rustled Murray Bateman.

Q. Where did you find him? A. In his office in Lowell, right out from the Junction mine.

Q. Anyone else present? A. No one present.

Q. What time of the day was it? A. About 10:00 o'clock; between 9:00 and 10:00 o'clock.

Q. What did Mr. Bateman have to say? A. I walked in and asked him, "What's the chance for a job?"

*John Patrick Foley—For National Labor Relations
Board—Direct.*

He said, "John, I'll look your record up and you come back Tuesday."

That makes it about the 4th of June.

Q. Did you go back Tuesday? A. I went back the same time, between 9:00 and 10:00 o'clock, Tuesday, and I asked him for a job, and he says no. I asked him, I said, "What does the record say, Mr. Bateman?"

He says, "John, as far as safety and working conditions are, your record is good, but," he says, "they have something against you."

Q. Did he tell you what that something was? A. He didn't say what it was. And I heard he was hiring men the following Friday.

He said that— I asked him would there be any chance to come back Friday, and he said, "John, you need not never come back here no more." He says, "I'm hiring men, but I won't want you."

Q. At that time did you belong to Local No. 30? A. Yes, sir.

Q. Were you ever on the picket line during the strike? A. I was on the picket line from the first day the strike was called until the last day.

Q. While you were on the picket line did you ever apply for work with the company? A. No. I come up on some of our boys there at the employment office about the 20th day of August, and I heard a debate going on there with Bateman and the boys, and through that I figured there was no job there for me.

Q. What did you hear actually said, and who said it? A. I heard Mr. Bateman talking to Mr. Day.

Mr. Bateman, at the time I come up there, Mr. Day said to Mr. Bateman, he said, "Who do you mean by 'them fellows'?"

He says, "I mean every one of you that come out on strike."

John Patrick Foley—For National Labor Relations Board—Cross.

It was talking in regard to the work, and a fellow by the name of Coldwell spoke up and he said, "What's the chance of me going to work?"

He was also a striker.

And he says, "That means every one of you."

Q. How much longer did you stay there? A. I didn't stay there very much longer. They broke up and I left then.

Q. Have you applied for work since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 17, the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received as Board's Exhibit No. 17.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 17.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Foley, are you an employee of Phelps Dodge Corporation at the present time? A. No, sir.

Q. Is it true that you have not been an employee of the Phelps Dodge Corporation at any time since January 15, 1935? A. Yes, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Shattuck Denn Mining Company.

Q. How long have you been working with the Shattuck Denn Mining Company? A. Since March of 1936.

Q. Do you remember what day in March you started to work there? A. I couldn't say for sure what day it was.

Q. What is your job at the Shattuck Denn Mining Company? A. Miner.

*John Patrick Foley—For National Labor Relations
Board—Cross.*

Q. Have you been a miner continuously since March, 1936, for the Shattuck Denn Mining Company? A. Yes, sir.

Q. What is your present rate of pay? A. \$5.48.

Q. Did you leave the district on January 15, 1935? A. Yes, sir.

Q. Where did you go? A. Mojave, California.

Q. Did you notify the Employment Department or anybody with the company that you were accepting new employment elsewhere? A. I asked for 30 days' furlough at that time, and I over-stayed my furlough.

Q. When did you actually get back, May 30, 1935? A. May 30, 1935.

Q. Did you ever send any notification to the company when you over-stayed your furlough that you were no longer an employee? A. No, sir.

Q. How did you come back on May 30, 1935? A. The job had all played out, and being that Bisbee be my home, why, naturally, that's the place I drift for.

Q. What was the job that you had in Mojave? A. As a miner working in the shaft.

Q. For what company? A. Soledad Mining Company.

Q. Were you laid off? A. The mine shut down.

Q. The mine shut down? A. Yes, sir.

Q. Are you an officer of the Bisbee Miners' Union, Local No. 30, at the present time? A. Yes, sir.

Q. What office do you hold? A. I am Secretary—Financial Secretary.

Q. Do you have in your possession the records of the union? A. No, sir. I have from the present day on remnants of the books of 1935—from 1933 on.

Q. What do you mean by "remnants"? A. Well, just what parts have not been misplaced.

Q. Do you have in your possession any record of a meeting held the evening of June 7, 1935? A. No, sir.

*John Patrick Foley—For National Labor Relations
Board—Cross.*

Q. What became of that record, do you know? A. I couldn't say.

Q. Do you have any record of the meeting held on June 8, 1935? A. No, sir.

Q. Do you have any membership records for the month of June and the month of July, 1935? A. Yes, sir. There's men on the books that were in the organization in June of 1935, but I wouldn't say they were all together.

Q. You are unable, though, to produce any record of any minutes of a meeting held on the evening of June 7, 1935? A. No, sir.

Q. You say that you applied for employment by talking to Mr. Bateman on June 1st, 1935, is that correct? A. Yes, sir.

Q. You also have testified, I believe, that you were in the picket line continuously from June 10, 1935, to August 24, 1935, is that right? A. Yes, sir.

Q. What employment did you have between the period beginning August 24, 1935, and the time you went to work for the Shattuck Denn Mining Company in March of 1936? A. Well, I got on relief during the strike of 1935, and just relief work until I went to work at the Shattuck Denn.

Q. You had no regular employment, then, between the time you returned from Mohave until you went to work for the Shattuck Denn Mining Company in 1936? A. Yes, sir.

Q. Did you make an effort to seek employment other than relief work? A. Yes, sir.

Q. Did you leave the district at any time? A. The only time I left the district was after Mr. Bateman had told me that there was nothing there for me, and I went to Tombstone looking for a job, and that's the only place I have been. I haven't been financially able to leave.

Q. Was it a surprise to you when Mr. Bateman said it was very likely that you could get a job in view of the fact that you had thrown up a job during the depression and

*John Patrick Foley—For National Labor Relations
Board—Redirect.*

not notified the company that you were not coming back?
A. Well, it did, to a certain extent. Pressure had been brought on me for three months before I left here. For the last month I worked for them they as much as told me that if I didn't do what was expected of me, why, to come and get it.

Q. Come and get what? A. Get my time.

Q. In other words, you were warned that you were not turning out enough work? A. I was doing the work, but it was imposed on me at all times that if I ever fell down on it to come and get it, that is the action they taken. The last shift I worked for them was the 14th of January, and I was told that night by the boss that "Fisher says 'Foley, any time you fail to get it, why, you had better come in the office.'"

Q. Well, isn't that true of every man if he doesn't put out a day's shift, that he will be told to come and get his time? A. Not necessarily.

Q. Well, isn't it customary if a man is not doing the proper amount of work to tell him that? A. They don't do it, but they have their right, I guess, to do something for them if he doesn't.

Q. Isn't it a fact that Mr. Bateman told you that your accident record was very poor when you came back from Mohave? A. It isn't.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: No questions.

Trial Examiner Kennedy: Do you wish this witness back?

Mr. Persinger: Yes, I do have one question, too.

Redirect examination:

Q. (By Mr. Persinger) How do working conditions at the Shattuck Denn Mine compare with those at the Copper Queen Mine? A. Working conditions?

*Edward Bowden—For National Labor Relations Board—
Direct.*

Q. Yes, the condition of the air and the condition of the—that is, the dampness of the drifts and any other working conditions? A. Well, at one time, not a short ways back, the Denn was poor, conditions were poor for a man to work in there. It was pretty hot. And now they have a ventilation system in there that makes it pretty favorable, comparable with the Queen, I guess.

Q. In other words, the conditions are about the same, then? A. Just about the same.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Do you want this witness back?

Mr. Kitchel: We have no further questions.

Mr. Persinger: No.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

EDWARD BOWDEN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Edward Bowden.

Direct examination:

Q. (By Mr. Persinger) Mr. Bowden, were you formerly employed by the Phelps Dodge Corporation— A. Yes, sir.

Q. When did you first begin work for them? A. About 1920.

*Edward Bowden—For National Labor Relations Board—
Direct.*

Q. And did you work continuously after that? A. No, sir, I was laid off at the Hill in '21, I believe, and I was reinstated in '22.

Q. Well, I don't want every off and on occurrence during the 20's. When did you first begin working continuously? A. Well, 1927.

Q. And from 1927 you worked continuously up until what time? A. Until the strike.

Q. And what was your job? A. Miner.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you a member of the union at the time of the strike? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the first day that you were on the picket line? A. The first day of the strike.

Q. And when was the last day? A. The last day of the strike.

Q. During the time that you were on the picket line, did you ever apply for work? A. No, sir.

Q. After the strike was over, did you ever apply for work? A. Yes, sir.

Q. When? A. In the middle of September, about the middle of September.

Q. Of 1935? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. And where did you find him? A. At his office.

Q. Anyone else there? A. No, sir.

Q. What time of day was it? A. About 10:00 o'clock in the morning.

Q. And what did you say? A. I just asked him if there was any chance for a job.

Q. What did he say? A. He said they hadn't made no disposition of my case, and I asked him if it would do me any good to rustle, and he said, "No, not until they make disposition of the case."

*Edward Bowden—For National Labor Relations Board—
Cross.*

Q. Any further conversation? A. No, sir. I thanked him and went out.

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 18 the employment record of this witness.

Trial Examiner Kennedy: Any objection of this offer?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 18.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 18.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) You are not employed by the Phelps Dodge Corporation at the present time? A. No, sir.

Q. You haven't been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. Are you employed at the present time, Mr. Bowden? A. Yes, sir.

Q. Who are you working for? A. Shattuck Denn.

Q. What is your occupation with Shattuck Denn? A. Timber man.

Q. What rate of pay does that carry? A. \$5.76.

Q. \$5.76? A. Yes, sir.

Q. The timber man's rate of pay is higher than that of a miner, is that right? A. Yes, sir.

Q. How long have you been working for Shattuck Denn? A. Since March, I believe.

Q. Since March of what year? A. This year, '37.

Q. March, 1937? A. Yes, sir.

Q. You don't know what time in March you went to work for them, I suppose? A. No, sir, I couldn't be exact.

*Edward Bowden—For National Labor Relations Board—
Cross.*

Q. And you have worked for them continuously as a timber man since that time? A. Well, I started as a miner.

Q. You started as a miner? A. Yes, sir.

Q. And you are now working as a timber man? A. Yes, sir.

Q. When you walked out on June 10, 1935, you were employed by Phelps Dodge Corporation as a miner, were you not? A. Yes, sir.

Q. What rate of pay were you receiving at that time? A. \$5.

Q. Did you receive any employment during the period from June 10, 1935, until, say, August 27, 1935? A. No—relief.

Q. You worked on relief? A. Yes, sir.

Q. When you say that you worked on relief, you mean that you were employed to work on what were commonly known as relief projects? A. Yes, sir.

Q. And during that period how many days a week did you work on relief? A. We got seven days a month, I believe.

Q. Seven days a month? A. Yes, sir.

Q. That is not true of all cases; that was in your case? A. My case, yes.

Q. Then did you—were you employed at any time between August 25, 1935, and March, 1937, when you worked for Shattuck Denn? A. Yes, sir.

Q. Who did you work for? A. I went to work for the Arizona Edison in, I believe, November.

Q. Arizona Edison Company? A. Yes, sir; 1936.

Q. In November of 1936? A. Yes, sir.

Q. Didn't you go to work for them in October of 1935? A. It could have been October, yes, sir.

Q. In other words, when you say November, you mean— A. About.

Q. —November, 1935? A. Yes, that is right; the year of the strike.

*Edward Bowden—For National Labor Relations Board—
Cross.*

Q. And how long did you work for Arizona Edison?

A. Well, the time I went to Shattuck Denn.

Q. Until you went to Shattuck Denn? A. Yes, sir.

Q. You worked for the Arizona Edison Company then continuously from about October, 1935, until you commenced your employment with the Denn? A. I was laid off for 10 days or two weeks in January of 1936, and then I went back to work for them.

Q. Then, with the exception of about 10 days in January of 1936, you were working for Arizona Edison Company?

A. Yes, sir.

Q. Continuously until you went to work for Shattuck Denn? A. Yes, sir.

Q. And you have worked for Shattuck Denn continuously from that time to the present time? A. Yes, sir.

Q. What kind of work were you doing for the Arizona Edison Company? A. I was laborer, \$4 a day.

Q. \$4 a day? A. Yes, sir.

Q. And you worked the full week, did you? A. Six days, yes, sir, and then I went on a salary and got \$3.66.

You worked 6 days a week at \$4.00, and then went on at 7 days a week at \$3.66 a day? A. That is, on a salary, yes, sir.

Q. On a salary? A. Yes, sir.

Q. You said you received a salary of \$3.66 a day? A. Yes, sir.

Q. \$110.00 a month, or equivalent to \$3.66 a day? A. Yes, sir.

Q. You were put on a salary, then, by the Arizona Edison Company, of \$110.00 a month? A. Yes, sir.

Q. And you worked 7 days a week? A. I was on call at all times.

Q. Did you change your type of work at all when you went on salary? A. Well, while I was working on the gas truck, and they decided to put me on a salary when I was on the gas truck.

*Edward Bowden—For National Labor Relations Board—
Recross.*

Q. You have made no application for employment with the Phelps Dodge Corporation, then, since September, 1935?

A. No, sir.

Q. After Mr. Bateman told you that no disposition had been made of your case, when you say you saw him in September of 1935, you didn't go back to see him at any time after that? A. No, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Q. (By Trial Examiner Kennedy) You were employed as a miner at the Phelps Dodge Corporation when you went on strike? A. Yes, sir.

Q. You were not discharged at all? A. No, sir.

Q. How much were you paid at that time? A. \$5.00.

Q. \$5.00 a day? A. Yes, sir—

Q. And you are now drawing how much? A. \$5.76.

Q. \$5.76 a day? A. Yes, sir.

Q. Do you want your old job back? A. I want to be reinstated; yes.

Q. You would rather work at Phelps Dodge at \$5.00 a day than at your present job at \$5.76? A. I want my job back as a miner at Phelps Dodge.

Q. Would you take it back if it involved that reduction in pay? A. Yes, sir.

Trial Examiner Kennedy: That is all.

Re-cross-examination:

Q. (By Mr. Evans) You didn't go out on the walkout on June 10th, Mr. Foley? A. Yes, sir.

Q. Now, one other question, please: You have been outside of the courtroom, have you, this morning? You haven't been in the courtroom this morning? A. No, sir; I wasn't here this morning.

Paul Amaro—For National Labor Relations Board—Direct.

Q. However, a number of persons who have been in the courtroom have told you that the Trial Examiner asked them whether they would prefer to continue to work for Shattuck Denn or come back to work for Phelps Dodge, didn't they? A. Yes, sir.

Q. And they told you what their answers had been to that question, did they not? A. What they said; yes.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do either side want to question this witness any further?

Mr. Persinger: No.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Mr. Persinger: Could we take a short recess?

Trial Examiner Kennedy: We will take a 10-minute recess at this time.

(Short recess.)

Trial Examiner Kennedy: The hearing will be in session.

PAUL AMARO, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: Paul Amaro.

Direct examination:

Q. (By Mr. Persinger) Mr. Amaro, were you formerly employed by Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. I was employed about in March of 1934.

Paul Amaro—For National Labor Relations Board—Direct.

Q. And you worked continuously thereafter until what time? A. Until June 10, of 1935.

Q. At that time did you go out on strike? A. I did.

Q. Were you on the picket line during the strike? A. I was.

Q. What was the last day you were on the picket line? A. August 24, 1935.

Q. Is that the last day of the strike? A. Yes, sir.

Q. Since that time have you applied for work with the company? A. I have.

Q. When? A. Along about the first week of September, 1935.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. At the employment office.

Q. What time of day? A. It was about 10:00 o'clock.

Q. Was that in the outer office, or in Mr. Bateman's inner office? A. In the inner office.

Q. Was anyone present? A. No one but him.

Q. What did you say? A. I asked him if there was any chance for a miner. He said he could not consider a job for me or any other striking miner.

Q. Was anything further said? A. No, sir.

Q. Have you applied for work since then? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 19 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 19).

Mr. Persinger: Take the witness.

Paul Amaro—For National Labor Relations Board—Cross.

Cross-examination:

Q. (By Mr. Kitchel) Mr. Amaro, are you an employee of the Phelps Dodge Corporation at the present time? A. I am not.

Q. Have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. Are you employed by anyone at the present time? A. Shattuck and Denn Mining Corporation.

Q. What is your job with them? A. Miner.

Q. When did you first go to work for them, Mr. Amaro? A. The first time I worked for the Shattuck and Denn was in 1929; or, do you mean after the strike?

Q. Well, I was particularly referring to after June 10, 1935. A. It was in June of 1936.

Q. Do you remember the date? A. I don't, exactly.

Q. Have you worked continuously for the Shattuck Denn Mining Company since June of 1936 until the present time? A. I have.

Q. Have you been employed as a miner with that company all that time? A. I have.

Q. What is your present rate of pay? A. My present rate of pay is \$5.48.

Q. What was your rate of pay at the time you walked out on June 10th, 1935? A. \$5.00.

Q. You say that you were in the picket line from June 10, 1935, to August 25, 1935, every day? A. Not every day.

Q. What were you doing the days that you weren't on the picket line? A. Stayed home and down town.

Q. Would you say that you were there most of the days during that period? A. Most of the time I was there; yes.

Q. Were you employed at all during that period? A. Only on relief.

Q. How many days a week? A. We were getting four days, I believe—is what I was getting a month.

Paul Amaro—For National Labor Relations Board—Cross.

Q. Four days a month? A. Six day—\$24.00 a month, I was getting.

Q. After August 25, 1935, when the picket line was dis-established, what did you do? A. I stayed around here until I asked Mr. Bateman for a job, and after that I left for Kingman, Arizona.

Q. Did you get employment there? A. I did.

Q. For whom did you work? A. Boriama Mining Company.

Q. Approximately what date did you go to work for the Boariana Mining Company? A. It was about the second week or—I don't remember the date; it was about along the second week of September.

Q. Were you employed as a miner? A. I was.

Q. What was your rate of pay? A. \$4.50.

Q. A day? A. Yes, sir.

Q. How many days a week did you work? A. 7 days.

Q. How many days a week were you working with the Phelps Dodge Corporation at the time you walked out? A. 5 days.

Q. How long did you continue with the Boriama Mining Company? A. I worked there continuously until about March of that same year.

Q. That would be March of the next year, would it not? You went to work in September of 1935, and then you left? A. '36; yes.

Q. March of '36. Did you leave them voluntarily? A. I did.

Q. What did you do between March of 1936 and June of 1936? A. I stayed around here looking for a job at the Shattuck Denn office.

Q. You had no work, then, in that period? A. I did not.

Q. Were you a member of the Bisbee Miners' Union, Local No. 30, in 1935? A. I was.

Q. In 1934? A. I was.

Q. Were you an active member? A. No.

Paul Amaro—For National Labor Relations Board—Cross.

Q. Did you attend the meetings regularly? A. Most of the time I attended them; yes.

Q. Did you attend any meetings of the Union during the week preceding the time of the walkout in 1935? A. I did.

Q. What meetings were they? Was there more than one? A. Well, I couldn't—

Mr. Persinger: If the Examiner please, I object upon the ground that it is not proper cross-examination.

Trial Examiner Kennedy: You confined your question, did you, to the meeting at which the strike vote was taken?

Mr. Kitchel: I merely asked him about meetings during the week prior to the strike. I had not confined myself to any particular meeting.

Trial Examiner Kennedy: Read the question, Mr. Reporter.

(The question referred to was read by the Reporter.)

Trial Examiner Kennedy: You may answer.

The Witness: I don't remember but the last meeting that we had prior to the strike.

Q. (By Mr. Kitchel) Do you remember what night of the week that was? A. On the 7th of June.

Q. Were you in attendance at that meeting? A. I was.

Q. Do you recall that the 7th of June was a Friday? A. It was Friday, June 7th.

Q. How many members of the Union were present at that meeting? A. I couldn't say; I don't know the exact number.

Q. You, yourself, were present, however? A. I was present.

Q. Could you estimate the number present? A. I haven't any idea at all of how many there was.

Q. Where was the meeting held? A. At the Union hall, on O. K. Street.

Paul Amaro—For National Labor Relations Board—Cross.

Q. How long did it last? A. I would say about six hours; between 5 and 6 hours.

Q. Was that the only meeting that you attended that week? A. I believe it was, to the best of my knowledge.

Q. Who presided over that meeting that you attended? A. Lee White was president at that time.

Q. Did he preside? A. Yes, sir.

Q. What was the business of the meeting? A. Well, it was to decide what to do in regards to the 8 men that they fired for Union activities.

Q. What was done? A. We called the strike vote.

Q. Did Mr. White preside throughout the meeting? A. I don't remember exactly if he did or not.

Q. How was the vote taken at that meeting, Mr. Amaro, on the question of whether or not a strike would be called? How did they vote? A. (Pause.)

Q. In other words, what was the method of voting on that proposition? A. I don't remember whether the fellows voted, or not.

Q. Was it a vote by showing of hands? A. I don't remember whether it was or not.

Q. Was there actually a strike vote that night? A. Sir?

Q. Was there actually a strike vote that night? A. There was that night.

Q. You are absolutely certain of that? A. On the 7th of June.

Q. But you are not certain about how the vote was taken? A. I am not certain about that.

Q. And you are not certain as to about how many men were there? A. I am not.

Q. And don't you know that Mr. Lee White was in Mexico that day? A. I don't remember.

Q. Did you vote? A. I did.

Q. How did you vote? A. I don't remember whether we signified by raising our hands, or whether we took a ballot on it.

Paul Amaro—For National Labor Relations Board—Cross.

Q. Did you know what you were voting for? A. I did.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: If the Examiner please, I move to strike the entire testimony relating to the strike vote, on the ground it is entirely immaterial.

Mr. Kitchel: Mr. Examiner, we are at a disadvantage here. There doesn't seem to be any record of this meeting. The only thing we can do is to try and find out what actually happened by examining these witnesses.

Trial Examiner Kennedy: What is the purpose of this line of questioning?

Mr. Kitchel: To find out if a strike vote was ever taken, and the cause for the strike. We contend there was no cause for the strike, as contained in the bylaws of the International constitution.

Mr. Persinger: If the Examiner please, I submit that it is not material whether a strike vote was taken. The strike was actually called, the pickets were established on Monday, June 10th, and a labor dispute actually existed at the time until August 24th. There is no dispute as to that.

Mr. Kitchel: Mr. Examiner, I think it raises a rather important question of law, since Mr. Day has testified that no demand was made on the company. He has further testified that no notice was ever given to the company, and testimony has been elicited and a stipulation has been entered into that no strike vote was called pursuant to the rules and regulations of the International.

Trial Examiner Kennedy: As to the picketing activity that we have had evidence of. Does the respondent contend that that is not Union activity?

Mr. Kitchel: No, we do not contend that for the first few days of the actual walkout.

Paul Amaro—For National Labor Relations Board—Cross.

Trial Examiner Kennedy: And there is testimony that the men have been refused reinstatement because of their striking and because of their picketing.

Mr. Kitchel: We do contend that that was not because of Union activities.

Trial Examiner Kennedy: I will leave the testimony in. I have some doubt as to its value.

Anything further of this witness?

Mr. Persinger: Nothing further.

Q. (By Trial Examiner Kennedy) You were employed as a miner at the Phelps Dodge? **A.** I was.

Q. When you left? **A.** I was.

Q. You were not discharged on June 10? **A.** I walked out.

Q. You walked out. Do you consider your present occupation with this company that you are now working for as desirable as working for Phelps Dodge under the conditions which you worked at the time you left your job on June 10, 1935? **A.** I do.

Q. You do? **A.** I didn't get that.

Trial Examiner Kennedy: Will you read the question, Mr. Reporter? If it is too involved I will reframe it.

(Thereupon the question was read by the Reporter as above set forth.)

The Witness: I want reinstatement at the Phelps Dodge.

Q. (By Trial Examiner Kennedy) You are not answering my question. Do you understand the question? **A.** It is not clear.

Q. Do you understand it? **A.** It is not clear yet.

Q. You, of course, understand the conditions under which you are now working? **A.** I do.

*Paul Amaro—For National Labor Relations Board—
Recross.*

Q. And you have in mind the conditions under which you worked at Phelps Dodge? A. I do.

Q. Now, which do you consider preferable. A. I would rather go back for the Phelps Dodge.

Q. Would you rather go back if it involved a cut in pay to \$5.00 a day? A. I will go under the present scale of wages.

Q. But if it was \$5.00 a day, that is what you got when you left, isn't that correct? A. That is what I was getting when I left.

Q. If that is what you would go back at, would you go back? A. I would.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: May I ask one more question?

Trial Examiner Kennedy: Yes.

Recross examination:

Q. (By Mr. Kitchel) At what time of this year did you add your name to the list of the men in Appendix A of the Complaint, which includes the 48 men, one of whom is you? Just recently? A. I don't remember the exact date.

Q. At whose request did you do that? A. At the Union's request.

Q. Did you meet with Mr. Persinger? A. I did not, not before that.

Q. Approximately what date did the Union request you to add your name to this list? A. I don't remember the date.

Q. Isn't it a fact that there is no difference in the working conditions at the Shattuck Denn and the Phelps Dodge? A. The working conditions?

Q. The conditions under which you work are the same are they not? A. Mining conditions are the same; yes.

*Paul Amaro—For National Labor Relations Board—
Redirect—Recross.*

Q. Rater of pay are the same, are they not? A. The same, as far as I know.

Q. And the amount of work you get in a week is the same? A. We get in 6 days a week. I don't know whether the Phelps Dodge works that many or not.

Mr. Kitchell: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: One more question.

Redirect examination:

Q. (By Mr. Persinger) Do you have to work six days a week? A. Well, that is their working schedule there.

Q. Six days? A. Six days a week.

Q. Is that a full day on Saturday? A. Sir?

Q. Is that a full shift on Saturday? A. Yes, sir.

Mr. Persinger: That is all.

Recross examination:

Q. (By Mr. Kitchel) Would you rather work six days a week than five days a week? A. Yes, I would rather work six days a week than I would five.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Will either party wish to recall this witness?

Mr. Persinger: I think not.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Wilford Davis Mortenson—For National Labor Relations Board—Direct.

WILFORD DAVIS MORTENSON a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Wilford Davis Mortenson.

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When did you first start work for them? A. In July, '29.

Q. And you worked how long? A. About—

Trial Examiner Kennedy: What year? Did you get the year there?

Mr. Persinger: 1929.

The Witness: About seven or eight months, I am not positive.

Q. (By Mr. Persinger) And what job did you have there? A. Mucker.

Q. When did you go back to work for the company? A. The 1st of April, 1934.

Q. And you worked how long? A. Until June, 1935. Until the time of the strike.

Q. And what job did you have in June, 1935? A. Miner.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. About how frequently were you on the picket line? A. Nearly every day.

Q. For how long? A. Until the strike was called off.

Q. Since the strike was called off, have you applied for reinstatement? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

*Wilford Davis Mortenson—For National Labor Relations
Board—Direct.*

Q. Where? A. Where.

Q. Yes. A. At the employment office.

Q. And about when was that? A. It was the last of November or the first of December.

Q. What time of day was it? A. It was along in the morning about 9:00 o'clock, I guess.

1 Trial Examiner Kennedy: That was in 1935, was it?

The Witness: Yes, sir.

Q. (By Mr. Persinger) Did you see Mr. Bateman in his inner office, or the outer office? A. In his general office.

Q. Was anyone present? A. No, sir.

Q. And what did you say to him? A. I asked Mr. Bateman if there was any chance of going back to work.

Q. What did he say? A. And he told me, he said, "Mortenson, if you want a job you will have to go to a union camp to get it." He says, "There is nothing in Bisbee for you."

Q. Anything further said? A. No, sir.

Q. Have you applied for work to Mr. Bateman since that time? A. No, sir.

Q. Have you applied to any official of the company for your job? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 20 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 20.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 20.)

Mr. Persinger: Take the witness.

Wilford Davis Mortenson—For National Labor Relations Board—Cross.

Cross examination:

Q. (By Mr. Evans) You are not employed by the Phelps Dodge Corporation at the present time, are you, Mr. Mortenson? A. No, sir.

Q. You haven't been employed by the Phelps Dodge Corporation since June 10, 1935, have you? A. No, sir.

Q. By whom are you employed? A. Shattuck Denn.

Q. When did you go to work for Shattuck Denn? A. It was in August, '36—I believe—wait a minute—no, '37.

Q. Last August, or a year ago last August? A. A year ago last August; it would be '36, that is right.

Q. And you have worked for the Shattuck Denn Company since that time, have you not? A. Yes, sir.

Q. As a miner? A. Yes, sir.

Q. You received the rate of \$5.40 a day—\$5.48 a day? A. Well, at the time—part of the time I was getting more than that. I have been getting regular miner's pay.

Q. What was the maximum daily salary you received, or wage you received, from Shattuck Denn during the time you worked for them? A. \$6.58 or \$6.54, I believe it was; something like that.

Q. \$6.54 a day? A. Yes, sir.

Q. And you are working on a six-day week basis, are you not? A. Yes, sir.

Q. At the time you left the employ of Phelps Dodge Corporation you were working on a five-day week basis? A. Yes, sir.

Q. And you were getting \$5 a day? A. Yes, sir.

Q. You were employed as a miner by Phelps Dodge? A. Yes, sir.

Q. During the period from June 10, 1935, until August, 1936, when you went to work for Shattuck Denn, did you work for anyone else? A. Yes.

Q. Where? A. At the Gadsden Garage in Douglas.

*Wilford Davis Mortenson—For National Labor Relations
Board—Cross.*

Q. When did you go to work for the Gadsden Garage?

A. It was along the latter part of October in '35.

Q. 1935? A. Yes, sir.

Q. Did you work at the Gadsden Garage continuously until you went to work at Shattuck Denn? A. Yes, sir.

Q. What did you do at the Gadsden Garage? A. Well, I was a service station attendant.

Q. How much pay did you receive? A. I was working mostly on commission?

Q. On a commission basis? A. Yes, sir.

Q. Your monthly income was around a hundred dollars a month? A. Right around there.

Q. You earned more than that during certain months? A. Well, a few months it would run \$110, and some months as low as \$90. It averaged about \$100.

Q. And you state that during that period from October, 1935, to August, 1936, you were regularly employed at about \$100 a month? A. Yes, sir.

Q. What were your earnings at Phelps Dodge Corporation, we will say, during the month of May, 1935? What would they average for the month? A. Well, I don't remember. I was working five days a week at \$5 a day—would run about \$25 a week.

Q. It would run somewhere around a hundred dollars a month, would it not? A. Or better; yes, sir.

Q. Why did you go out on strike, Mr. Mortenson? A. Well, mostly for discrimination against the union.

Q. Did you attend any union meeting during the week immediately preceding the date on which you walked out? A. Yes, sir.

Mr. Persinger: I object, Mr. Examiner, as not proper cross examination.

Trial Examiner Kennedy: I will leave the answer stay in.

*Wilford Davis Mortenson—For National Labor Relations
Board—Cross.*

Q. (By Mr. Evans) What date was that meeting held?
A. Well, it was that Friday night, the night the strike was called.

Q. Where was it held? A. At the Union Hall.

Q. Who presided over it? A. Earl Morrison, I believe; I am not positive.

Q. Approximately how many members of the union were present? A. I know there was a quite a crowd.

Q. Did all of them work for the Phelps Dodge Corporation? A. No.

Q. There were a number who were not employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. Would you say that 50 per cent of those present were not employed by the Phelps Dodge Corporation? A. No, not that many.

Q. What percentage, approximately? A. Around 10 per cent, at the most. You say not employed by the Dodge?

Q. Yes. A. Yes; less than 10 per cent.

Q. How many would you estimate were there? A. In my estimation, there would be about 125; between 100 and 125.

Q. Is that the only meeting you attended during that week? A. Yes, sir.

Q. You say you saw Mr. Bateman some time in November or December of 1935 about a job? A. Yes, sir.

Q. You were working at that time at the Gadsden Garage, were you not? A. I was.

Q. Do you remember what day of the week it was? A. No, I don't.

Q. How did you happen to go to see him about 9:00 o'clock in the morning? A. Well, I was working night shift at the garage and two fellows came by after me from Douglas that wanted to come up and see him, and we left Douglas around 7:00 o'clock that morning and came right on up.

Wilford Davis Mortenson—For National Labor Relations Board—Cross.

Q. As a matter of fact, applicants for jobs generally see Mr. Bateman some time between 7:00 and 9:00 in the morning, do they not? A. Yes.

Q. And you were very careful to get there at the time when there was no one else present, were you not? A. No, sir.

Mr. Persinger: I submit, Mr. Examiner, it is becoming argumentative.

Trial Examiner Kennedy: Proceed. I do not think that it is particularly objectionable.

Q. (By Mr. Evans) There was no one else present at that time? A. There was a man in the outer office in the lobby. There was quite a few of them.

Q. But there was no one in the room when you talked to Mr. Bateman? A. Not when I talked with him. He took them one at a time in there.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want to go back to the Phelps Dodge Company? A. Yes, sir.

Q. Why is it that you prefer going back there over staying with the Shattuck Denn? A. Well, it's just a better mine, better working conditions.

Q. In what way are the working conditions better? A. Well, they are better ventilated. The Shattuck Denn is a pretty hot place to work and gassy.

Q. You would even prefer to go back if you were getting \$5 a day at the Phelps Dodge? A. I didn't quite understand that.

Q. If going back to Phelps Dodge meant that you would have to take a pay rate of \$5 a day, would you still prefer going back to Phelps Dodge? A. No, sir.

Anson Perry Windsor—For National Labor Relations Board—Direct.

Q. You would not? A. Not for \$5 a day.

Trial Examiner Kennedy. I see. Anything further?

Mr. Persinger: Nothing farther.

Mr. Kitchel: Nothing further.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: Is the witness going to be recalled?

Mr. Persinger: I think not.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Trial Examiner Kennedy: Call your next witness.

ANSON PERRY WINDSOR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: Anson Perry Windsor.

Mr. Evans: Mr. Trial Examiner, I wonder if there would be any objection if we called Mr. Mortenson back for one question. We have no objection to this gentleman staying.

Trial Examiner Kennedy: Any objection?

Mr. Persinger: No objection.

Trial Examiner Kennedy: You had better leave the room.

Mr. Kitchel: We have no objection to his staying.

Trial Examiner Kennedy: Very well. You may stay.

(Witness temporarily excused.)

Wilford Davis Mortenson—For National Labor Relations Board—Cross.

Anson Perry Windsor—For National Labor Relations Board—Direct.

WILFORD DAVIS MORTENSON, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, further testified as follows:

Cross examination (continued):

Q. (By Mr. Evans) You were working at the Campbell Mine at the time of the walk-out on June 10, 1935? A. No.

Q. Where were you working? A. At the Junction.

Q. At the Junction Mine? A. Yes.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: All right, Mr. Windsor.

ANSON PERRY WINDSOR, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, was examined and testified as follows:

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. June 10th or 11th; I don't remember just the date, 1934.

Q. What was your job? A. Mucker.

Q. How long did you work for them? A. Well, until the strike. I was off on the sick list.

Q. When did you go on the sick list? A. Some time in March.

*Anson Perry Windsor—For National Labor Relations
Board—Direct.*

Q. When the strike was called you were on the sick list?
A. Yes, sir.

Q. Were you being paid a salary while you were on the sick list, or receiving any pay? A. I was receiving insurance.

Q. Insurance? A. Yes.

Q. Is that from the company? A. Well, they have—I forget just what they call it.

Mr. Evans: Employment Benefit Association.

The Witness: Yes, sir.

Q. (By Mr. Persinger) Were you at any time on the picket line during the strike? A. Yes, sir.

Q. When were you first on the picket line? A. The first day.

Q. Were you on there frequently after that? A. Yes, sir.

Q. What was the last day you were on the picket line?
A. Oh, I would say about just a little before the strike was called off.

Q. Since the strike have you applied for reinstatement?
A. Yes, sir.

Q. When? A. It was around September; right at the last of October or the first of September; I couldn't remember the date.

Q. The last of September or the first of October? A. The last of August.

Q. The last of August, you mean? A. Yes.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. Mr. Bateman's office.

Q. What time of day was it? A. Oh, around—in the early morning at the rustling time, around 8:00 o'clock.

Q. Was anyone present? A. Oh, there was men there, but I don't know who they were. They were seeking employment.

*Anson Perry Windsor—For National Labor Relations
Board—Cross.*

Q. Did you see Mr. Bateman in the outer office or in his inner office? A. I saw Mr. Bateman in his private office.

Q. Was anyone in that office. A. Not at the time I spoke to him.

Q. What did you say to him? A. I asked him, "How about a job?"

Q. What did he say? A. He told me that there wasn't nothing for me, or "any of my kind."

Q. Did you say anything? A. Well, I said to him, "Why?" He said that we took too an important part in the strike.

Q. Was anything further said? A. No.

Q. Have you applied since that time? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 21 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Evans: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 21.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Do you know Hugh Schafer? A. Yes, sir.

Q. During the period between June 10th and August, 1935, you beat up on him, did you not? A. I had a fight.

Q. He was an employee of the company, was he not? A. Yes, sir.

Q. As a result of that you were arrested for assault? A. Yes, sir.

Q. You are not employed by Phelps Dodge Corporation at the present time? A. Not at the present time, no.

*Anson Perry Windsor—For National Labor Relations
Board—Cross.*

Q. You have not been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. For whom are you working at present? A. Shattuck Denn.

Q. When did you go to work for Shattuck Denn? A. November 23, 1936, I believe.

Q. You have worked down there for Shattuck Denn Mining Company continuously since that time, have you not? A. Yes.

Q. What type of work are you doing at the Shattuck Denn? A. I am running a slusher.

Q. What rate of pay do you receive? A. \$5.48.

Q. You are classified as a miner? A. Yes, sir.

Q. You were classified as a mucker when you left the employ of Phelps Dodge Corporation, were you not? A. Yes, sir.

Q. What rate of pay did you receive as a mucker? A. \$4.40.

Q. \$4.40? A. Yes, sir.

Q. You were working five days a week, were you, prior to June 10, 1935? A. Forty hours a week.

Q. And you have been working on a six-day basis with the Shattuck Denn? A. Yes, sir.

Q. Between June 10, 1935, and October, I believe you said it was, 1936, or November, 1936— A. November, if you are referring to when I went to work.

Q. That is right. A. At Shattuck Denn.

Q. Between June 10, 1935, and November, 1936, did you have any employment? A. I went to work for Pleasant & Hasler, contractor on this road out here at Fort Huachuca.

Q. You worked on the Fort Huachuca Road? A. Yes.

Q. When did you go to work for Pleasant-Hasler? A. Some time in November, or around the first of December; I couldn't say.

Q. Of the year 1935? A. Yes, sir.

*Anson Perry Windsor—For National Labor Relations
Board—Cross.*

Q. And how long did you work for Pleasant-Hasler?

A. I don't know; I can't say when I was laid off. The job finished. It was around nine months I worked for them.

Q. You worked for them approximately up to the time you went to work for Shattuck Denn, is that correct? A. Up to the time before I went to work.

Q. Two or three months before you went to work for Shattuck Denn? A. Something like that.

Q. And what type of work were you doing for Pleasant-Hasler? A. Well, I was laborer, truck driver, oiler.

Q. What rate of pay did you receive? A. \$4, \$5, and \$75 an hour, eight hours.

Q. \$75 cents an hour for eight hours? A. Yes, sir.

Q. And did you receive that during all the time you worked for them? A. No, I received \$4 a day part of the time.

Q. How many days a week did you work? A. Forty hours a week.

Q. Forty hours a week? A. Yes.

Q. That is five days? A. Yes, sir.

Q. Now, prior to the time you went to work for Pleasant-Hasler, did you have any employment? A. No, sir.

Q. Did you work on relief? A. Let's see—I think I worked one month on the Golf Course on the W. P. A.

Q. What month was that? A. That was—well, after the strike—I left here and went to California and when I came back I went to—I worked one month on that, just before I went to work for Pleasant-Hasler.

Q. Did you attempt to find any employment while you were in California? A. Yes, sir.

Q. The last—strike that. When did you go off on the sick list, Mr. Windsor? A. It was a week or two after the strike was called.

Q. When did you first become ill and cease working? A. It was in March; I couldn't say the date.

*Anson Perry Windsor—For National Labor Relations
Board—Cross.*

Q. March of the year 1935? A. Yes, sir.

Q. So that you were not working then from March, 1935, until a week or two after June 10, 1935? A. No.

Q. And you were released for work then some time around June 21, 1935? A. Yes, sir.

Trial Examiner Kennedy: Speak up and answer for the record.

The Witness: Yes, sir.

Q. (By Mr. Evans) You never reported for work after you were released for work? A. No, sir, I didn't feel like I was able.

Q. Well, you are not released for work until you are able to work, are you? A. In some cases, I would say.

Q. Well, when did you first become able to work, Mr. Windsor? A. Well, when I was on the picket line I was limping around on my foot.

Q. And it wasn't until you went to work for Pleasant-Hasler that you were able to work? A. I wouldn't say that.

Q. Well, how long were you disabled after you were released? A. Well, let's see. About a month after the strike was called.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What pay are you now receiving at Shattuck Denn? A. \$5.48.

Q. And you got \$4.40 when you left Phelps Dodge? A. For the same work I am doing now.

Q. Do you want to go back to Phelps Dodge? A. Yes, sir.

Q. Would you go back at \$4.40? A. Well, the rate of pay that they pay—

Anson Perry Windsor—For National Labor Relations Board—Recross.

Q. No, at \$4.40, would you go back? A. Yes.

Q. Give up your \$5.48 and go over there and take \$4.40?

A. Yes, sir.

Trial Examiner Kennedy: That is all.

Recross examination:

Q. (By Mr. Evans) You would prefer to go back to work with Phelps Dodge Corporation at \$4.40 a day on a five-day basis rather than continue to work for Shattuck Denn at \$5.40 a day and on a six-day basis, is that correct? A. Yes, sir.

Q. Why? A. Because we have got a chance to organize the P. D., if we go back.

Q. You wouldn't figure on doing much work for Phelps Dodge while you were organizing, would you? A. You can work and talk to the men all at the same time.

Q. You figure on talking to the men while you are working, however? A. Well, you can see them on the street and talk to them.

Q. Well, you can see them on the street now, can't you? A. It don't do no good.

Trial Examiner Kennedy: Let's hold down the levity a little bit, please.

Q. (By Mr. Evans) You mean by that you would be able to force the men now working for Phelps Dodge Corporation to join the union?

Mr. Persinger: I move, before the question is completed, that it is improper.

Trial Examiner Kennedy: Let's have the complete question and then we will rule on it. Had you finished your question?

Mr. Evans: I will rephrase it.

Trial Examiner Kennedy: Very well.

*Anson Perry Windsor—For National Labor Relations
Board—Recross.*

Q. (By Mr. Evans) You mean by that, that you wouldn't be able to influence the men on the job while working, to join the union unless you were down there working with them?

Trial Examiner Kennedy: Now, do you object?

Mr. Persinger: Yes, I think the question is still improper.

Trial Examiner Kennedy: Overruled. You may answer.

The Witness: Well, I don't just understand what you mean.

Q. (By Mr. Evans) I mean by that, that if you were working next to a man on the job you can force him to join the union, can't you?

Mr. Persinger: I object to that.

Trial Examiner Kennedy: Overruled.

The Witness: You can talk to the man.

Q. (By Mr. Evans) And you can do a good many different things in talking to him, can't you? A. You don't have to force them. You can talk to them and tell them your ideas.

Q. And you wouldn't expect to do very much work while you were engaged in that conversation, would you? A. Well, that is noon hour, there is noon hour that you eat lunch.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

*Emery Adelbert Curtis—For National Labor Relations
Board—Direct.*

EMERY ADELBERT CURTIS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Emery Adelbert Curtis.

Direct examination:

Q. (By Mr. Persinger) Mr. Curtis, were you formerly employed by the Phelps Dodge Corporation? A. Was I formerly?

Q. Yes. A. Yes, sir.

Q. How long did you work for them? A. From the time they merged until the strike.

Q. Had you worked for the C. & A. prior to the merger? A. Yes, sir.

Q. How long did you work for the C. & A.? A. I think from '25.

Q. And from the merger up to the time of the strike did you work continuously with no lay-offs? A. Yes, sir.

Q. What was your job? A. Powder man.

Q. At about the time of the strike? A. Yes, sir.

Q. What job did you start out at? A. With the Phelps Dodge?

Q. Yes, at the time of the merger what were you doing then? A. I think I went on the belt.

Q. What pay does the powder man receive, the same as a miner? A. Yes, sir.

Q. Did you go out on strike, June 10, 1935? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line? A. It was the 13th or 14th of August.

*Emery Adelbert Curtis—For National Labor Relations
Board—Cross.*

Q. And how did it happen that you were not on the picket line after that? A. I had a chance to go and see the Coast, free trip, so I went.

Q. What time did you get back? A. We got back about the last of August.

Q. After you got back, did you apply for work from the company? A. No, sir.

Q. Why not? A. Because all the other boys had been turned down, and I didn't think there was any use of me trying it.

Q. Did you have any sons who were on the picket line? A. Yes, sir.

Q. Had they worked for the company and gone out on strike? A. At the time of the strike, I don't think he was working.

Q. Just one? A. I have one son, and he didn't work at all, just one.

Q. But people you knew had applied and they told you they had been turned down? A. Oh, yes.

Q. And you have never applied at any time? A. Never have.

Mr. Persinger: I offer as Board's Exhibit 22 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 22.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 22.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) How old are you, Mr. Curtis? A. I am 56 at the present time.

*Emery Adelbert Curtis—For National Labor Relations
Board—Cross.*

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. Am I an employee of the Phelps Dodge at the present time?

Q. Yes. A. No.

Q. Have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. Are you employed by anyone at the present time? A. W. P. A., P. W. A.

Q. Have you been employed on any other work other than relief since June 10, 1935? A. I done about one week's work in Warren since then.

Q. At Warren, Arizona? A. Yes, sir.

Q. What work was that, please? A. Oh, a—on a man's lot down there.

Q. What was your pay for that job? A. He gave me \$4 a day.

Q. When was that, Mr. Curtis? A. Well, I just can't say. I think it was last June. It was real hot. I don't know exactly what month it was.

Q. It was June, 1937? A. Yes.

Q. Have you been on relief work then except for that week? A. Yes, sir.

Q. All this period of time? A. Yes, sir.

Q. And you say that you—that you have never made personal application for employment? A. No, sir.

Q. Was it your thought that if the company wanted your services they would come and get you? A. Yes.

Q. You felt that Mr. Bateman would look you up and ask you to return to your work? A. No, I didn't think he would do that.

Q. You made no effort, though, to find out? A. No, I never.

Q. (Continuing) Whether you personally could go to work for the company? A. No.

Q. Have you applied any place else for work? A. No, sir.

*William Daugherty—For National Labor Relations
Board—Direct.*

Q. You haven't tried to get a job anywhere except on relief? A. No, sir. That is all. I haven't left the town at all.

Mr. Kitchel: I see.

Q. (By Mr. Kitchel) Did you ever apply for work at the Shattuck Denn? A. No. I was a little old was the reason I didn't do such a thing.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you want your job back at the Phelps Dodge?

The Witness: Yes, I will take it back.

Trial Examiner Kennedy: Anything else?

Mr. Persinger: Nothing else.

Q. (By Mr. Evans) May I ask you: You say you would take it back without applying for it? A. Without applying for it?

Q. Yes. A. If I thought I could get it, I would.

Mr. Evans: That is all.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

WILLIAM DAUGHERTY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name?

The Witness: William Daugherty.

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation, Mr. Daugherty? A. Yes, sir.

*William Daugherty—For National Labor Relations
Board—Direct.*

Q. When were you first employed? A. 1925, I believe.

Q. Were you employed at the time of the merger with C. & A.? A. I can't remember.

Q. How long was your last—strike that.

When was your last stretch of employment with Phelps Dodge terminated? A. I think I worked a couple of months in 1934.

Q. You have not been employed since 1934? A. No.

Q. Since—strike that.

Were you in town at the time of the strike? A. Yes, I was.

Q. Were you on the picket line? A. No.

Q. You were not on the picket line? A. No.

Q. Since the strike have you ever made application for work? A. Yes, sir.

Q. With the company? A. Yes, I have.

Q. When? A. I applied for work in the month of January.

Q. What year? A. 1937.

Q. That was last year? A. Yes.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where did you see Mr. Bateman? A. In his office.

Q. What time of day was it? A. About 8:30 or 9:00 in the morning.

Q. Did you see him in his outer office or inner office? A. Oh, I seen him in a little place where it was between an office where he had a bunch of men sitting around waiting for jobs, that he had already hired, I believe.

Q. And what did you say to him? A. I asked him if there was any chance for me looking for work.

Q. What did he say? A. Well, he thought for a while, and he says, "If there is an opening over at the Cole I will send you over there."

Q. Anything further said at that time? A. No.

Q. What did you do? A. Well, I came back and rustled a couple more days.

*William Daugherty—For National Labor Relations
Board—Direct.*

Q. And did you speak to Mr. Bateman again any of those later days? A. No.

Q. Did you see him again at any time? A. No, I didn't—only when he hired me; yes.

Q. When did he hire you? A. He hired me on or about the 15th of January.

Q. A few days after you first applied to him for work? A. Yes, two or three days after.

Q. Two or three days? A. Yes, sir.

Q. And where were you when he hired you? A. I was standing out in the crowd.

Q. Was that inside the office, or outside? A. Outside.

Q. Where was Mr. Bateman? A. He was standing out on the porch.

Q. And what did he do? A. He called off some names.

Q. Was yours among them? A. Yes.

Q. And what did you do then? A. Went inside the office and sat down where I told you before.

Q. And then Mr. Bateman spoke to you after that? A. No, he just—not until he called me into his office.

Q. And when he called you in his office, was anyone else there? A. Mr. Belindas, I believe.

Q. What was said when you went into his office? A. He didn't say anything. He told me to sit down in the chair.

Q. Did you sit down? A. Yes.

Q. What was said then? A. He got a card out and got the card and told me to go back to the doctor's office.

Q. Is the doctor's office close to the Employment Office? A. The next room.

Q. Did you take your card and go into the doctor's office? A. I didn't take it; he took it.

Q. He took it? A. Yes.

Q. What happened when you went to the doctor's office? A. Well, I went back there and sat down and waited for my turn to get examined.

*William Daugherty—For National Labor Relations
Board—Direct.*

Q. Were you examined by the doctor? A. Yes.

Q. What happened after your examination? A. When I came back out Mr. Bateman gave me a slip to bring up to the dispensary.

Q. Did you take the slip to the dispensary? A. Yes.

Q. What did you do with it when you got to the dispensary? A. I gave it to Mr. Smith.

Q. What was the point of taking the slip to the dispensary? A. To get my lungs X-rayed.

Q. To have the X-ray taken? A. Yes.

Q. And did you have the X-ray taken? A. Yes.

Q. And then what? A. He told me to go around to the Employment Office the next morning at 9:00 o'clock.

Q. Did you go back to the Employment office at 9:00 o'clock the next morning? A. Yes.

Q. Whom did you see? A. Mr. Bateman.

Q. Was anyone there besides the two of you? A. That's all; just Mr. Bateman.

Q. What did you say? A. He called me into his office and he said "Daugherty, I can't send you up there." "There was some men down to see me and they said you called them 'scabs', and I don't want no trouble up there."

Q. What did you say? A. I walked out.

Q. Have you been back since? A. I went back a couple of days later.

Q. Whom did you see that time? A. Mr. Bateman.

Q. Where did you see him then? A. In his office.

Q. Was anybody else there? A. No.

Q. What was said? A. I asked him who the men were that said I called them 'scabs.'

Q. What did Mr. Bateman say? A. He says, "I don't think I have to tell you that."

Q. Was anything further said? A. Well, I explained to him that I wasn't on the picket line, and then he said, "There's no use for you coming here for any more work."

William Daugherty—For National Labor Relations Board—Cross.

Q. Was anything further said? A. That was all.

Q. Have you been back since? A. No.

Mr. Persinger: I offer as Board's Exhibit No. 23, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 23.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Kitchel) Mr. Daugherty, were you first employed by the Phelps Dodge Corporation in the year 1924? A. It may have been; yes.

Q. Do you recall, Mr. Daugherty, that you worked from September 25, 1924, to July 30, 1925, for the Phelps Dodge Corporation? A. Yes.

Q. And you then left the service of the Company. Why? A. I just quit.

Q. Where did you go then? A. Stayed here.

Q. Don't you recall going to Miami at that time? A. I can't remember.

Q. When did you go back to work for the Company? A. I can't remember when I did.

Q. Do you recall that you returned to work for the Company on August 22, 1925, and worked until August 4, 1925, and then again left the service of the company voluntarily? A. I can't remember.

Q. Do you recall that you were employed again on January 30, 1926, and that you were discharged on April 8, 1926? A. I can't remember.

*William Daugherty—For National Labor Relations
Board—Cross.*

Q. You don't recall ever having been discharged by the Company? A. I may have been discharged; yes.

Q. Do you recall that you were re-employed on August 11, 1928; that you worked until September 4, 1928; and that you again left the employ of the company voluntarily? A. It might be right.

Q. Have you worked for the Phelps Dodge Company since October 15, 1934? A. No, I haven't.

Q. Did you have some trouble with your eye at that time? A. Yes.

Q. Where were you from the period October 15, 1934, until around June, 1935? A. In Bisbee.

Q. You were in the district the entire time? A. Yes.

Q. Were you a member of Bisbee Miners' Union No. 30 at that time? A. Well, I wasn't paid up.

Q. Did you attend meetings? A. No, I didn't.

Q. Did you attend meetings just prior to the walkout? A. The only meeting I attended is the night I joined.

Q. Was that in 1935? A. I can't remember.

Q. You stated that you were not in the picket line at any time? A. No.

Q. I believe you have testified that your first application for employment was on January 15, 1937? A. Yes; on or about that time.

Q. Isn't it true that you were hired and then rejected by the examining physician? A. It is not.

Q. You state that you were not rejected by the examining physician? A. No, no.

Q. Mr. Daugherty, is it the usual practice that before a man is hired he is given a physical examination? A. Yes.

Q. Have you had any employment since you last worked for the company which was October 15, 1934? A. W. P. A.

Q. You have had no employment other than relief work? A. No.

Q. Were you an employee of the company on June 10, 1935? A. No.

*William Daugherty—For National Labor Relations
Board—Cross.*

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the Union? A. I don't remember when I did join the Union.

Q. Do you know what year it was in? A. It must have been 1934.

Q. You attended one meeting, at which you were initiated? A. Yes.

Q. And you did not go to any other meetings after that? A. No.

Q. Have you ever been to a meeting since? A. No.

Q. And you took no part in the strike? A. No.

Q. What makes you think you have been denied employment because of Union activity? A. Because Mr. Batemen told me that I called somebody "scabs."

Q. Because you called a man a "scab"? A. Some men "scabs."

Trial Examiner Kennedy: That is all.
Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Could we have a 5-minute recess?

Trial Examiner Kennedy: A 5-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Abedin.

Tom Abedin—For National Labor Relations Board—Direct.

TOM ABEDIN, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Tom Abedin.

Direct examination:

Q. (By Mr. Persinger) Mr. Abedin, have you been formerly employed by the Phelps Dodge Corporation? A. I worked for the C&A since 1918 until 1923.

Q. Were you working for the C&A at the time they merged with the Phelps Dodge Corporation? A. Yes, sir.

Q. Have you worked continuously for Phelps Dodge since the merger? A. I worked—What did you say?

Q. Continuously, without any layoffs, since '31? A. I got laid off on the 31st.

Q. 31st of what? A. '31; 1931.

Q. 1931? A. 1931.

Q. When did you go back to work? A. And then I was off about 6 months—I was off about three months, and then they hired me back again.

Q. Was that layoff in 1931 the last layoff you had? A. No, sir. In 1932 they hired me back again, and I worked about 6 months, and then they laid me off again.

Q. When did you go back after that? A. 1934.

Q. 1934? A. Yes, sir.

Q. Do you remember what month? A. The 12th of February.

Q. How long did you work at that time? A. I worked until the strike.

Q. Did you go out on strike? A. Yes, sir.

Q. At the time of the strike, were you a member of the Union? A. I was a member of the Union.

Q. Were you on the picket line during the strike? A. During every day.

Tom Abedin—For National Labor Relations Board—Direct.

Q. What is the last day you were on the picket line? A. It was about the 22nd of August.

Q. Previously, when you had been laid off, had the Company ever called you back without your actually applying? A. Never did.

Q. And they never sent you a letter? A. Yes; they did send me a letter on the 12th—12th of February. I got the letter here.

Q. Do you have that here? A. I have the letter here (producing letter).

Mr. Persinger: I offer as Board's Exhibit next in order a letter dated February 10, 1934, purported to be signed by Mr. Bateman.

Mr. Kitchel: May we see it, counsel?

(The letter referred to was passed to counsel.)

Mr. Evans: Are you offering this in evidence?

Mr. Persinger: Yes. So far as I know, it is legitimate.

Mr. Evans: We object to it upon the ground it is incompetent, irrelevant and immaterial. Apparently it represents a letter written by Mr. Bateman to Mr. Abedin in 1934, to the effect that if he would come back and take an examination he would be employed.

Mr. Persinger: It merely shows, Mr. Examiner, that the Company has, at least on one occasion, written to a man to come back after a layoff without his actually applying.

Trial Examiner Kennedy: Do you question the authenticity of the letter?

Mr. Evans: No. I think the signature is correct.

Trial Examiner Kennedy: It may be received in evidence as Board's Exhibit next in order.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 24.)

Tom Abedin—For National Labor Relations Board—Cross.

Q. (By Mr. Persinger) Referring back to the time of the strike, Mr. Abedin, did any person employed by the company— A. Any person employed by the Company?

Q. Wait a minute. (Continuing)—any person employed by the Company ever advise you that you could not return to work? This was while the strike was going on and while you were picketing; during that period. A. Yes. Several told me I couldn't go to work for the company no more.

Q. Who told you? A. Huh?

Q. Who told you? A. Oh, several guys; I couldn't remember their names.

Q. Do you remember the names of anyone? A. No, sir; I don't.

Q. After the strike was over, did you ever apply for work with the Company? A. 1936 I seen Mr. Bateman on the street and I asked him about a job.

Q. What did he say? A. He says, "No showing for us guys no more."

Q. Was anything else said? A. That is all.

Q. Why did you wait so long before applying for reinstatement? A. Just because I seen several friends of mine that had been going over there, and they had said there was no use for us, so I just didn't go.

Q. Have you applied at any time since you met Mr. Bateman on the street? A. No, I haven't.

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Have you discussed your testimony in this case with anyone, Mr. Abedin? A. No, I never.

Q. You haven't talked over with anyone at all what you were going to testify to in this case? A. No, I never have.

Q. With no other member of the Union? A. The Union?

Q. Yes. A. No.

Tom Abedin—For National Labor Relations Board—Cross.

Q. Have you attended any meeting with other members of the Union? A. Yes, I did.

Q. Who are involved in this case? A. No,—on this case; no.

Q. You haven't discussed with anyone what your testimony was to consist of today? A. No, not until today.

Q. Or you haven't discussed it at any time? A. No, no time on this case; no.

Q. How did you happen to bring that letter from Mr. Bateman with you? A. Well, I thought I might need it here, and I couldn't talk very good English, so I thought I would represent this letter.

Trial Examiner Kennedy: Just a moment. Will you read that answer, Mr. Reporter:

(Answer read.)

Q. By Mr. Evans: And you didn't show that letter to anyone before you came up here? A. No, I didn't.

Q. You didn't show it to anyone before you came into the courtroom? A. Exactly.

Q. Didn't you show it to Mr. Persinger? A. Yes, I showed it to Mr. Persinger.

Q. When did you show it to Mr. Persinger? A. Yesterday.

Q. Well, then, you attended a meeting yesterday, did you? A. Yesterday I attended a meeting.

Q. And there were other members of the Union present at that meeting? A. All the members; yes.

Q. And this case was discussed at that time? A. Yes; they were talking about this case.

Q. And was there any discussion as to what your testimony was going to be in this case at that time? A. No; just questioned me a few questions and that is all there was to it.

Q. And you were told, were you not, that in the event the question should be asked you as to why you didn't apply

Tom Abedin—For National Labor Relations Board—Cross.

for employment prior to 1936, that you should say that others had applied and told you that there wasn't any chance? A. The others told me there was no chance with the company.

Q. I know, but yesterday at that meeting that you attended, wasn't that told you, that that should be your answer? A. No, I don't think he said that.

Q. Did anybody ever tell you to say that? A. No.

Q. Have you discussed with anyone what—Have you discussed with anyone why you didn't apply for employment prior to 1936? A. No, I didn't.

Q. You have not discussed that with anyone? A. No, no one.

Q. You didn't discuss that at the meeting yesterday? A. No, sir.

Q. Was yesterday, at that meeting, the first time that you attended any meeting at which these cases were discussed? A. No; we had been meeting every once in a while, every couple of weeks.

Q. Why did you go out on strike, Mr. Abedin? A. Well, because I belong to the Union and they called the strike, and I go out.

Q. That is the only reason you know why you went out on strike? A. Yes, sir.

Q. When was the first time you knew that you were going out on strike? A. I belonged to the union since 1933.

Q. When was the first time that you knew you were going out on strike on Monday, June 10, 1935? A. I know June 7th we took a vote.

Q. Where did you take that vote? A. In the Union hall.

Q. How did you happen to be there? A. I attended the meeting.

Q. That was on a Friday? A. I believe so.

Q. Did you usually have union meetings on Friday? A. I could not tell you the Fridays or Saturdays. They changed it every once in a while.

Tom Abedin—For National Labor Relations Board—Cross.

Q. You don't know whether the meeting that you attended was on a Friday or a Saturday? A. No, I don't; I couldn't say.

Q. Did anyone tell you to come to that meeting? A. Yes; they told me.

Q. Who told you? A. All the boys on the street told me there was going to be a meeting.

Q. What time of day was that meeting? A. I couldn't say; I don't remember.

Q. Was it in the morning? A. No, it was in the evening.

Q. About what time did it start? A. I could not remember.

Q. How long did it last? A. Oh, I guess two or three hours.

Q. Who presided at the meeting? A. Mr. Lee White.

Q. Mr. Lee White was there? A. He was our president at that time.

Q. And he was there and presided, at the meeting? A. Yes.

Q. Mr. White was at the meeting, was he? A. Yes, he was there—no, I couldn't tell you whether he was there or not, but we got notice from him,—we got orders from him.

Q. You got orders from him? A. Yes.

Q. What were those orders? A. We were to have a meeting that night.

Q. How did you know you got the orders from Mr. White? A. Well, the boys told me that the orders come from Mr. White, that we were to have a meeting.

Q. And you don't know whether Mr. White was at the meeting or not, then? A. I couldn't remember for sure.

Q. What happened at the meeting? A. Well, we just took a strike vote.

Q. That is all you did? A. That is all.

Q. Did you discuss why you were having a strike vote? A. I didn't stay very long; just vote to strike and I go out.

Q. Then, how long were you at the meeting? A. I couldn't say; maybe half an hour, an hour.

Tom Abedin—For National Labor Relations Board—Cross.

Q. I thought you said the meeting lasted two or three hours? A. Well, the boys told me the meeting lasted that long.

Q. But you were only there about a half an hour or an hour? A. About half an hour.

Q. And what did you do while you were there? A. We just took a vote, a strike vote; I didn't hang around there any more.

Q. How do you take a strike vote? A. Just take a vote, sir, for the strike.

Q. And did you vote? A. Yes.

Q. What did you do to vote? A. Huh?

Q. What did you do when you voted? A. Just voted; that is all.

Q. How did you vote? A. Just voted on a piece of paper, wrote on a piece of paper, and it was put in the box.

Q. Oh; you wrote on a piece of paper and put it in a box? A. Yes.

Q. What else did you write on that paper? A. Just my name.

Q. That is all? A. That is all.

Q. That is all you wrote on that paper, your own name? A. No; we put on a cross.

Q. Oh, you put a cross on? Where did you put the cross, Mr. Abedin? A. I couldn't say, on that paper; I couldn't remember where.

Q. Was it a blank piece of paper? A. I couldn't say.

Q. You don't know what was on it? A. No.

Q. But you wrote your name on it? A. Yes, sir.

Q. And put a cross on it? A. Yes. They took the names first and then we closed this paper and put it in a box.

Q. Can you read, Mr. Abedin? A. Not very well.

Q. How did you know where to put your name on that piece of paper? A. It tells us there, the paper tells you there where to put your name.

Q. You could read that all right? A. Yes.

Tom Abedin—For National Labor Relations Board—Cross.

Q. How did you know where to put your cross? A. It tells you there the same way.

Q. You were able to read that all right? A. Yes, I could read that much.

Q. As I understand it—Have you worked any place else since— A. (Interrupting) Worked for leasors every once in a while, or part of the time.

Q. And where was the first place you worked since August, 1935, do you remember? A. At the Boras Mine.

Q. At the Boars Mine? A. Yes, sir.

Q. That is in the vicinity of Bisbee, is it not? A. Yes, sir.

Q. And when did you go to work for the Boras Mine, Mr. Abedin? A. In the Boras—I have been at the Boras three months now.

Q. Oh, you have been working at the Boras for three months? A. Just part of the time; maybe two weeks at a time.

Q. You haven't been working there regularly, then? A. No.

Q. Now, this is January. Then you probably went to work for the Boras about November, 1937? A. Yes, about that time.

Q. And what was the nature of the work you had been doing at the Boras? A. Mining.

Q. What do you get in the way of pay? A. \$5.50 a day.

Q. Now, did you work any place prior to going to work at the Boras? A. No—W. P. A.

Q. Oh, W. P. A.? A. Yes.

Q. So that W. P. A. work, then, is the only work that you have done since August of 1935, up to the time you went to work for the Boras, is that correct? A. Exactly.

Q. You have worked for no one else? A. I have worked for Mr. McKenna, a short time; not quite two months; Jim McKenna.

Tom Abedin—For National Labor Relations Board—Cross.

Q. You worked for Jim McKenna on the McKenna lease?

A. Yes, sir.

Q. And about when was that, Mr. Abedin? A. I think it was about in March sometime.

Q. In March of 1937? A. Yes, sir.

Q. And you worked for a few months for Jim McKenna?

A. Yes, sir.

Q. And you worked as a miner, did you? A. Yes, sir.

Q. What rate of pay did you receive there? A. When I first went there, \$5.50, and then he raised it up to \$6.00 a day.

Q. You are working at the Boras at the present time?

A. No, I haven't been working for two weeks now, and I am supposed to go back to work on the 2nd.

Q. You say you are supposed to go back to work on the 2nd? A. Next month.

Q. February? A. Yes, sir.

Q. Now, did you work for anyone other than Mr. McKenna and the Boras? A. No, I never.

Q. Did you leave Mr. McKenna's employment voluntarily? Did you quit? A. No. He left about 15 men at the time I laid off.

Q. Oh, he laid off about 15 men at that time? A. Yes.

Q. On this W. P. A. work that you have done from time to time, did you at any time work regularly, steadily? A. On W. P. A.?

Q. Yes. A. No; we just worked on W. P. A. 11 days a month.

Q. 11 days a month? A. Yes.

Q. And that is on various projects around the district? A. Yes, sir.

Q. You haven't worked on any of the road construction jobs? A. No; we just pave these roads here.

Q. You didn't work on the Fort Huachuca Road? A. No, I never.

*Tom Abedin—For National Labor Relations Board—
Redirect.*

Q. Now, the only time that you saw Mr. Bateman, then, was on the street in Lowell sometime in 1936? A. Yes, sir.

Q. And was that during the day or in the evening? A. In the evening.

Q. After supper? A. Something like that. After supper, I think it was.

Q. Do you remember about what time in 1936 that was? A. January, I believe it was.

Q. About January, 1936? A. About January.

Q. That is the only time that you have made any application for employment, was the time that you saw Bateman on the street? A. That is the only time.

Q. You have never called at his office? A. No.

Q. Did you ever attempt to get work at the Shattuck Denn? A. Yes, I did.

Q. And you weren't able to get a job there? A. No. They hired me one time, and they turned me down on kidney trouble, the doctor.

Q. The examining physician turned you down on account of kidney trouble? A. Yes, sir.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Any thing further?

Redirect examination:

Q. (By Mr. Persinger) How long ago was that that you were turned down for kidney trouble? A. That was in '36.

Q. What part of '36? A. October.

Q. October, of '36? A. Yes.

Q. And where are you working now? A. In the Boras Mine. I am not working now, but I will be on the 2nd.

*Tom Abedin—For National Labor Relations Board—
Redirect.*

Q. Did you have to take a medical examination to get in the Boras Mine? A. No, you don't have to be examined when working for leasors.

Mr. Persinger: That is all.

Q. (By Trial Examiner Kennedy) You say you are working part time at the Boras Mine? A. Part of the time; yes.

Q. How much time do you put in out there a month? A. Well, it depends on how big orders they get from the company; how many railroad cars; sometimes he gets 8 or 9, and then we finish that and lay off.

Q. You mean 8 or 9 days a month? A. 8 or 9 cars, railroad cars.

Q. How much time does that amount to a month? A. Sometimes we work two weeks, and sometimes 20 and sometimes 25 days.

Q. What job did you have at the Phelps Dodge when you went out on strike? A. Miner.

Q. Miner? A. Yes, sir.

Q. Were you employed regularly there at that time? A. Yes.

Q. And how much did you earn? A. \$5.00.

Q. \$5.00 a day? A. Yes.

Q. Now, there is some conflict in your testimony about your coming in here with this letter. As I understood it, you first testified that you had not discussed that letter with anybody, and later you stated that you had. How do you explain that? A. Well, I just got—I just couldn't understand very well, and I just don't know what I was saying, I guess.

Q. Do you mean to say that you have discussed that letter with someone before you came in? A. Yes, that letter.

*Tom Abedin—For National Labor Relations Board—
Cross—Redirect.*

Q. How long have you been in this country? A. Since 1912.

Trial Examiner Kennedy: 1912. That is all. Anything further?

Mr. Evans: Mr. Trial Examiner, may I ask two more questions?

Trial Examiner Kennedy: Yes.

Cross examination (continued):

Q. (By Mr. Evans) At what mine were you working, Mr. Abedin, at the time you walked out on June 10, 1935?

A. The Campbell shaft.

Q. You were working at the Campbell? A. Yes.

Q. Before you got this letter from Mr. Bateman, you had seen Mr. Fisher about going back to work, had you?

A. Yes, I saw Mr. Fisher. I couldn't tell you how long before Mr. Bateman sent me that letter.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: I think I might clarify one thing.

Redirect examination:

Q. (By Mr. Persinger) At this meeting yesterday, Mr. Abedin, what part did you actually take in the meeting? What did you say? A. What did I say?

Q. Yes. A. I didn't say hardly anything. I just was there.

Q. Did you ask any questions? A. About this case?

Q. Didn't you sit in front of me in a chair and answer my questions? A. Yes, I did.

Q. And that was all you did? A. That's all.

Q. And you showed me the letter? A. Yes.

Q. And that is all that was said about the letter; you just showed it to me? A. That's all.

*Grover D. Windsor—For National Labor Relations Board—
Direct.*

Q. So that actually there was no discussion of your testimony or the letter; you answered my questions and you showed me the letter? A. That was all there was to it. You only wanted to see the letter, too.

Mr. Persinger: That is all.

Mr. Evans: Nothing further.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Persinger: Mr. Windsor.

GROVER D. WINDSOR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Grover D. Windsor.

Direct examination:

Q. (By Mr. Persinger) Mr. Windsor, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When did you go to work for them? A. I went to work the 8th of June, '34.

Q. And you worked how long? A. One year.

Q. What job did you start in at? A. Mucker.

Q. What job did you have in June of '35? A. Running a muck machine.

Q. What rate of pay did you receive for running a mucking machine? A. \$5.24.

Q. Were you a member of the Union in June of '34? A. Yes.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

*Grover D. Windsor—For National Labor Relations Board—
Cross.*

Q. When was the first day you were on the picket line?

A. The first day of the strike, the 10th of June.

Q. When was the last day? A. The 26th of June.

Q. Since the strike have you at any time applied for reinstatement? A. Yes, sir.

Q. When? A. Somewhere along the 1st of November of '35.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. In his office.

Q. What time of day was it? A. I would say it was right around 9:30 or 10:00 o'clock.

Q. In the morning? A. Yes, sir.

Q. Was anybody else there? A. I don't believe so.

Q. What did you say? A. I asked Mr. Bateman for a job.

Q. What did he say? A. He said, "A hundred years after the next War, I'll give you a job."

Q. Was anything further said? A. No, sir.

Q. Have you applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 25, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 25.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Kitchel) Mr. Windsor, are you the brother of A. P. Windsor, who has recently testified in this case?

A. Yes, sir.

*Grover D. Windsor—For National Labor Relations Board—
Cross.*

Q. Are you employed by Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Denn Mining Company.

Q. Shattuck Denn Mining Company? A. Shattuck Denn.

Q. Are you working at the present time? A. No, sir.

Q. Are you off on disability? A. Yes, sir.

Q. What happened to you? A. I broke my hand.

Q. While working? A. Yes, sir.

Q. How long have you been working for the Shattuck Denn Mining Company? A. Since November, '36.

Q. What has been your job with the Shattuck Denn? A. I started out as mucker, running a muck machine.

Q. What is your rate of pay? A. \$5.76.

Q. What was the highest rate you received since you went to work with them? A. \$6.84.

Q. \$6.84? A. Yes.

Q. This may have been a mistake, Mr. Windsor, but you testified that in June, '35, you were working as a mucker for the Phelps Dodge Corporation?

Mr. Persinger: I think the testimony was mucking-machine operator.

The Witness: Yes.

Q. (By Mr. Kitchel) Did I understand you to say that your rate was \$5.24 at that time? A. Yes, sir.

Q. Prior to the time when you went to work for the Shattuck Denn Mining Company in November, I believe you testified of November, 1936, did you have any other employment? A. I worked at Hasler's.

Q. For the Pleasant-Hasler Construction Company? A. Yes, sir.

Q. When did you go to work for them? A. Somewhere around the 1st of December, '36.

*Grover D. Windsor—For National Labor Relations Board—
Cross.*

Q. December, '36? A. '35, I guess.

Q. The 1st of December, 1935? A. Yes.

Q. How long did you work for them? A. Up until May.

Q. From December 1, 1935, to May, 1936? A. Yes.

Q. What was your job with the Pleasant-Hasler Construction Company? A. I was working on the bridge gang.

Q. Whereabouts? A. At the Huachuca,—Fort Huachuca Road.

Q. What was your rate of pay on that job? A. \$4.00 a day.

Q. How many days a week did you work? A. Well, 6 days—5 days. I started at 6 days, and I think they cut down to 5 days along the last.

Q. You continued at the same rate of pay all the way through? A. Yes, sir.

Q. Prior to December 1, 1935, did you have any other employment? A. No, just unemployed.

Q. What did you do between the period of June 10, 1935, until December, 1935? A. I worked on relief.

Q. How many days a week would you get work on relief? A. Well, it amounted to \$24 a month.

Q. You had no other employment during that period? A. No.

Q. Did you state the date in November, 1935, when you talked to Mr. Bateman? A. No, I didn't.

Q. Do you recall the date? A. No, I couldn't recall the day; somewhere along the first of November.

Q. Do you recall the day of the week? A. No, I couldn't say that.

Q. Was it a regular rustling day or hiring day? A. I don't know that, either. It may have been a rustling day, but I was there after rustling hours.

Q. Were there others there at the time to see him? A. No, there was not.

Q. You were the only one? A. Yes, sir.

*Grover D. Windsor—For National Labor Relations Board—
Redirect.*

Q. Was anybody standing outside? A. I didn't see anybody.

Q. What was it that he said again? A. "A hundred years after the next war, I'll give you a job."

Q. You are sure he said that? A. Yes, sir.

Q. Were you on the picket line every day during the strike? A. Well, up until the 26th of June.

Q. Was that the time when the picket line was disestablished? A. No, sir.

Q. You said the 26th of June? A. Yes.

Q. And you weren't in the picket line at any time after that? A. No, sir.

Q. Where were you? A. Up here in jail.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Is there any difference between the present job with the Shattuck Denn and the job that you had with Phelps Dodge? A. In the rate of pay, you mean?

Q. Yes. A. Yes.

Q. What is the difference in the rate of pay? A. Well, I was making \$5.24 when I left the Phelps Dodge, and I am making \$5.76 now.

Q. You are making \$5.76 now. Are the conditions of employment any different? A. I don't think so.

Trial Examiner Kennedy: That is all.

Mr. Persinger: Just a moment.

Redirect examination:

Q. (By Mr. Persinger) What job do you have at Shattuck Denn now? A. Running a Finley; a mucking machine.

*Grover D. Windsor—For National Labor Relations Board—
Recross—Redirect.*

Q. Do you know what that pays now at Phelps Dodge?
A. No, I don't. I guess it is the same.

Mr. Persinger: That is all.

Mr. Kitchel: I have just one more question to clarify some of your testimony.

Recross examination:

Q. (By Mr. Kitchel) Were you arrested on the charge of assaulting Larry Kuder? A. Yes, sir.

Q. Was he an employee of the Phelps Dodge Corporation? A. He was hired that morning.

Q. What morning? A. The 26th of June.

Mr. Kitchel: That is all.

Redirect examination:

Q. (By Mr. Persinger) Did you hit Larry Kuder? A. No, I did not.

Mr. Persinger: Nothing more.

Recross examination:

Q. (By Mr. Kitchel) Were you present at the time the fight occurred? A. I was there.

Q. Who else was present? A. Jack Cornett, Joe Woods, Monte Reed.

Q. Isn't it a fact that Kuder was quite severely injured at that time? A. At the testimony, yes. I don't know how badly he was injured.

Q. Did you jump on him when he was down? A. I did not.

Q. Did you mix up in that fight in any way? A. I did not.

Q. What actually happened?

Mr. Persinger: If the Examiner please—

The Witness: It is a long story.

Trial Examiner Kennedy: Just a moment.

*Grover D. Windsor—For National Labor Relations Board—
Recross.*

Mr. Persinger: I think this is going pretty far afield.

Trial Examiner Kennedy: I beg your pardon?

Mr. Persinger: I think this is going pretty far afield.

Trial Examiner Kennedy: What is the purpose of this inquiry?

Mr. Kitchel: Naturally, there has been a lot of hostile feeling during the strike and, as has been brought out by the testimony, there were several charges of assaulting employees, which hostile feeling has not disappeared at this time. We also have a right to know the type of man we are dealing with when we are being told we have to put him back to work.

Mr. Persinger: If the Examiner please, respondent obviously knows the type of man. He worked for him long enough, and he has been in the community long enough, and as for evidence of assaults, there is evidence so far that one man during an entire strike, which lasted from June 10th to August 24th, was assaulted.

Trial Examiner Kennedy: Is it the contention of the respondent that they are refusing to hire these men because of a fight?

Mr. Kitchel: No. We are trying to bring out, for the purpose of the record, the type of man that we are dealing with, and also the strike picture.

Trial Examiner Kennedy: I do not see the materiality of it. I will sustain the objection.

Mr. Kitchel: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Joe Henry Dunkerson—For National Labor Relations Board—Direct.

Mr. Persinger: Do you think we have time for one more?

Trial Examiner Kennedy: Yes, I think so.

Mr. Persinger: Mr. Dunkerson.

JOE HENRY DUNKERSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Joe Henry Dunkerson.

Direct examination:

Q. (By Mr. Persinger) Were you formerly employed by the Phelps Dodge Corporation? A. When they merged.

Q. Had you worked for C. & A. before the merger? A. I did.

Q. And since the merger had you worked continuously up to the strike, or had you been laid off? A. Since the strike, I worked on W. P. A. since then.

Q. Wait a minute. The merger was about 1931. A. Oh. I worked continuously until the strike.

Q. You worked continuously from '31 to June, '35? A. Yes.

Q. What job did you have? A. I was tool nipper.

Q. When did you become a tool nipper? A. Well, I did quite a lot of that. I would say four or five years. I was transferred from the shops underground when they merged, and I was tool nipper for a long time.

Q. In June, 1935, did you go out on strike? A. I did.

Q. Were you a member of the union at that time? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

*Joe Henry Dunkerson—For National Labor Relations
Board—Direct.*

Q. What was the last day that you were on the picket line? A. Well, I couldn't say for sure, but it was up near the last. I would say two or three days at least before we called off the strike.

Q. During the period of the strike were you on the picket line frequently? A. Quite often.

Q. Since the strike have you applied for reinstatement at any time? A. I have.

Q. When? A. Well, I couldn't give no definite time at that, but shortly after the strike.

Q. A matter of days after the strike? A. What?

Q. It was a matter of several days after the strike? A. Well, I couldn't—it wasn't so very many, but I couldn't be definite about that at all.

Q. To whom did you apply? A. Bateman.

Q. Where did you find him? A. I found him in his office.

Q. What time of day was it? A. Well, I would say 9:00; 8:30 or 9:00 o'clock.

Q. Was anyone else present? A. I couldn't say there was.

Q. What was said? A. I just asked him, "What is the chance for a job?" He said, "None."

To my best remember, he said they hadn't done nothing about the strikers yet. That is the best of my memory of what he said.

Q. Was anything further said? A. No.

Q. Have you applied since that time? A. No, sir; I have not.

Mr. Persinger: I offer as Board's Exhibit No. 26 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

*Joe Henry Dunkerson—For National Labor Relations
Board—Cross.*

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 26.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Evans) You are not employed by Phelps Dodge Corporation at the present time, Mr. Dunkerson?

A. No, sir.

Q. You have ~~not~~ been an employee of Phelps Dodge Corporation since June 10, 1935? A. I have not.

Q. Have you worked any place since June 10, 1935, other than on W. P. A.? A. Yes. I worked in Idaho; Sunshine Mines, two months even.

Q. At the Sunshine Mines in Idaho? A. Yes, sir.

Q. And when did you start to work there? A. Started June 13th.

Q. June when? A. The 13th.

Q. What year? A. '36.

Q. What kind of work did you do there? A. Worked in the steel shop.

Q. And you say you worked there two months? A. Two months.

Q. Continuously? A. Yes, sir.

Q. What rate of pay did you receive at the steel shop? A. Well, I taken sharpener's place for about two weeks. That was \$6.50.

Q. \$6.50 a day? A. Yes, sir.

Q. And how many days a week did you work? A. We worked every day there.

Q. Seven days a week? A. Yes, sir.

Q. Did you receive \$6.50 a day while you were there? A. No, I think I worked 13 shifts while he was gone.

Q. Then after he came back what did you receive? A. I worked five and a quarter—I got \$5.25, and that was the helper's pay.

Joe Henry Dunkerson—For National Labor Relations Board—Cross.

Q. You received \$5.25 a day? A. Yes, sir.

Q. What rate did a tool nipper receive in June, 1935, working for the Phelps Dodge? A. Well, 55 cents an hour; I believe it was. It was mucker's wages, anyway.

Q. Mucker's wages? A. Yes.

Q. About \$4.44 was the mucker's rate, wasn't it? A. Something like that.

Q. Or \$4.40? A. \$4.40, I believe.

Q. A day? A. Yes, sir.

Q. Now, did you work for anyone else other than the Sunshine Mines? A. No, I didn't.

Q. Have you ever worked over at the Banner Mine at Lordsburg? A. No, sir, I haven't. I got a job there, but I taken the flu and I never did get to go to work.

Q. You say you got a job at Banner? A. I got a job there, but I was taken sick with flu and they never did call me again.

Q. When did you get that job at the Banner Mine? A. That was a year ago last Christmas.

Q. That would be Christmas of 1936? A. '37—yes, '36.

Q. Was it after you had worked at Sunshine? A. Yes, sir.

Q. And what kind of a job did you get over at Banner? A. I was supposed to get a toplander job.

Q. What rate of pay did that job pay? A. Regular mucker's pay, \$40, I believe, was what they were paying there.

Q. But you became ill and didn't work there? A. Yes, sir.

Q. Did you work there at all? A. No, not a bit. Never was examined for the job, even.

Q. Did you ever try going back to the Banner? A. No, sir.

Q. Never went back and re-applied for employment? A. No, sir.

*Joe Henry Dunkerson—For National Labor Relations
Board—Cross.*

Q. Why did you leave the Sunshine Mine? A. Well I asked him if there would be any chance of sticking around and getting my family out there, and he said they wouldn't be any hopes of that, because, you see, they were putting this jackbit in the mine and he didn't know how it was going to be with the steel sharpener.

Q. You had asked them whether you had a permanent position there? A. That is what I meant by it, sure.

Q. And they said they couldn't assure you of any permanent position, and, therefore, you left them? A. Yes, sir.

Q. However, you worked steadily for two months up to the time you left? A. Yes, sir.

Q. They didn't tell you that your work was temporary there, did they? A. No, they didn't, not exactly that way. But when they give me permanent enough work to send for my family I didn't know how to take that.

Q. In other words, he couldn't assure you that your job would be permanent? A. No, because they were putting in those jackbits and he didn't know whether there would be enough for a helper in there when these jackbits was made; that is what he was referring to.

Q. Have you attempted to obtain work at the Shattuck Denn? A. I put in an application for a steel sharpening job or helper in shops there.

Q. When did you put in that application? A. Well, I couldn't be sure about when that was, some time this last Spring, though.

Q. You haven't been employed by the Shattuck Denn, have you? A. No, I haven't.

Q. Would you be willing to work underground at the present time? A. For what place?

*Joe Henry Dunkerson—For National Labor Relations
Board—Cross.*

Q. Underground mine job, mucking job? A. Yes, sir, I would, for the right amount of pay. I am working on P. W. A.; be glad to have a job with better pay.

Q. Then from June 10, 1935, until June 13, 1936, when you went to work at Sunshine, you had no work other than P. W. A. work? A. No, sir, I haven't.

Q. How many days were you working on P. W. A. during that period? A. Well, I don't know just how many days we had. Just had a certain amount to work out, but some was 11 shifts, and some is, you know, some is 8 and 9, it is according to what rate, of course, I was on the 11 shift.

Q. Eleven shifts a month? A. A month.

Q. And how much were you receiving? A. \$44.

Q. \$44 a month? A. Yes.

Q. Aside from the time you saw Mr. Bateman shortly after the strike which you have referred to, you have made no other applications for employment? A. I have not.

Q. With Pheips Dodge Corporation? A. No, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: We will be in recess until 9:00 o'clock tomorrow morning.

(Whereupon, at 4:50 o'clock p. m., an adjournment was taken until 9:00 o'clock a. m., Tuesday, February 1, 1938.)

Proceedings.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION.

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and
INTERNATIONAL UNION OF MINE, MILL
AND SMELTER WORKERS, LOCAL NO. 30.

CASE No.
XXI-C-266

ROOM 2

COCHISE COUNTY COURT HOUSE
BISBEE, ARIZONA

TUESDAY, FEBRUARY 1, 1938

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:00 o'clock a. m.

Before: THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM A. EVANS, 807 Title & Trust Building, Phoenix, Arizona, on behalf of the Phelps Dodge Corporation, Respondent.

PROCEEDINGS.

Trial Examiner Kennedy: The hearing will be in session.

*Vernon Dell Curtis—For National Labor Relations Board—
Direct.*

Mr. Kitchel: Mr. Trial Examiner, counsel have agreed to stipulate that in the case of Emery A. Curtis, who testified yesterday, that Mr. Curtis worked for the Phoenix-Tempe Stone Company at the rate of \$4 a day for seven days a week in the Fall of 1935 for the period of one month, and was then laid off.

Mr. Persinger: So stipulated.

Trial Examiner Kennedy: Which Curtis is that?

Mr. Kitchel: E. A. Curtis.

Trial Examiner Kennedy: E. A. Curtis.

Call the next witness.

Mr. Persinger: Mr. Vernon Curtis.

VERNON DELL CURTIS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Vernon Dell Curtis.

Direct examination:

Q. (By Mr. Persinger) Mr. Curtis, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. Were you employed by the Phelps Dodge Corporation in June of 1935? A. No, sir.

Q. What was the last date prior to June, 1935, that you were employed by the company? A. I was discharged on June 14, 1934.

Q. What reason was given you for that discharge? A. When I came on graveyard shift the night foreman at the Junction mine told me that we was going to dissolve partnerships.

Q. Did he explain anything further than that? A. No.

Q. That was approximate? A. A year before the strike? A. Yes, sir.

*Vernon Dell Curtis—For National Labor Relations Board—
Direct.*

Q. Since you were discharged have you applied for work with the company? A. Yes, sir.

Q. How many times? A. The first time was, I'll say, a month after I was discharged. I tried to get on—

Q. Wait a minute. I just want the times now. What was the next time after that? A. It was after the strike in the Fall, I'll say, November or October.

Q. And have you applied since that time? A. In Lowell one day, yes; not at the employment office.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. What was the first day you were on the picket line? A. The first day the strike was called.

Q. What was the last day? A. Well, I wouldn't say for sure, but it was right at the last of the strike.

Q. And what was the first occasion after the strike that you applied for work? A. I asked Mr. Bateman for a job.

Q. Wait a minute. When was that, now? A. In '36—'35, the fall of '35.

Q. Do you remember what month? A. It was in the fall; I would say November or October.

Q. And where did you see Mr. Bateman? A. In his office.

Q. What time of day was it? A. It was in the forenoon.

Q. Was anyone else present? A. No.

Q. And was this in Mr. Bateman's inner office? A. In his employment office.

Q. I understand there are two offices, the outer office for reception, and then his own personal office. Which one were you in? A. The first one; I guess that is the reception office.

Q. The outer office. What did you say to Mr. Bateman? A. I asked him, "How's the chance to go to work? It's pretty tough bucking relief." He said, "There's no chance of the likes of you to get a foothold in this camp again."

Q. Anything further said at that time? A. No, I left.

*Vernon Dell Curtis—For National Labor Relations Board—
Cross.*

Q. And when was the next time you applied? A. It was in the summer of '36.

Q. And where? A. In a—well, you might call it a sporting joint in Lowell; they have a ticker tape down there that was receiving the outcomes of the Major League baseball scores, and we were all there getting them, and I asked him for a job.

Q. Well, now, who was "him"? A. Mr. Bateman.

Q. Who else was present? A. Well, there was different fellows there.

Q. Do you remember the names of any of them? A. Well, Frank Stone, he was the proprietor; that is, he was working in the place.

Q. Anyone else that you remember by name? A. That is the only one.

Q. And what time of day was this? A. In the evening.

Q. And did Mr. Bateman reply to you? A. He says, "In 300 years we will give you fellows a job again."

Q. Anything further said? A. No.

Mr. Persinger: I offer as Board's Exhibit No. 27, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 27.)

Cross examination:

Q. (By Mr. Kitchel): Mr. Curtis, are you an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you ever been an employee of the Phelps Dodge Corporation since June 15, 1934? A. No, sir.

*Vernon Dell Curtis—For National Labor Relations Board—
Cross:*

Q. And it is true, is it not, that you were discharged on that date? A. I didn't understand you.

Q. It is true, is it not, that you were discharged on June 15, 1934? A. Well, I thought it was the 14th.

Q. Well, the 14th or 15th? A. Yes, sir.

Q. Of June, 1934? A. Yes, sir.

Q. For whom were you working at the time of the walk-out on June 10, 1935? A. I was working for Uncle Sam, on the relief.

Q. Were you employed at all during the period from June 14, 1934, until June 10, 1935, other than on relief work? A. No, sir.

Q. And from the period June 10, 1935, until the present time, have you received any employment other than relief?

A. It was in November some day I went to work for Phoenix-Tempe Stone Company and I worked until some date in February or March.

Q. That was in November of 1935? A. Yes, sir.

Q. You worked until some date in February or March, 1936? A. Yes, sir.

Q. Correct. What was your job with the Phoenix-Tempe Stone Company? A. I was what you call a "mud man" on a rock-laying job.

Q. What was your rate of pay? A. Five bucks a day.

Q. Did you work seven days a week? A. No, sir; five days a week.

Q. Five days a week? A. Forty hours a week, to be stretched out some way.

Q. What was the reason for your quitting that job in March of 1936? A. We finished—completed the job. The construction camp moved out.

Q. You finished the job. What was your next employment following that, Mr. Curtis? A. I worked two weeks at Pleasant & Hasler Construction Company driving a truck.

Q. Was that on the Fort Huachuca Road? A. Yes, sir.

*Vernon Dell Curtis—For National Labor Relations Board—
Cross.*

Q. How soon after you left the Phoenix-Tempe Stone Company did you go with Pleasant & Hasler Construction Company? A. Not more than two weeks.

Q. How long did you say you worked for Pleasant & Hasler? A. Around two weeks; maybe into the third week.

Q. What was your job with them, did you say? A. Driving a truck.

Q. What was your rate of pay? A. A ton and a half truck is 62½ cents, and I was driving a 5-ton. I think it was 68 or 70 cents an hour.

Q. How many hours a day? A. Six.

Q. How many days a week? A. Well, some days we would work two days—some weeks we would work two days, and sometimes we would work seven.

Q. It varied during that two-week period you were with them? A. Yes, sir.

Q. How many days would you say you worked for that outfit during that two-week period? A. Well, I'll say a day and a half or three days.

Q. All but a day and a half or three days out of the 14? A. Yes, sir.

Q. Was that job completed? Is that why you left them? A. The fellow that I was working for took his trucks and left this part of the state. That automatically released me.

Q. What was your next job following that? A. I went to work for the Shattuck Denn January 13, 1937.

Q. You had no employment between the time you left Pleasant & Hasler, which would be in March or April of 1936, until January 13, 1937? A. No, sir; other than relief.

Q. What job did you start on with Shattuck Denn? A. I was in the bull gang.

Q. What was your rate of pay? A. Mucker's pay.

Q. And that was how much at that time? A. \$4.84.

Q. \$4.84 a day? A. Yes.

Q. How many days a week were you working? A. 7.

*Vernon Dell Curtis—For National Labor Relations Board—
Redirect.*

Q. Are you employed at the present time by the Shattuck Denn Mining Company? A. Yes, sir.

Q. What is your job at the present time? A. I am powder man.

Q. What is your rate of pay now? A. Miner's pay.

Q. And that is \$5.43? A. \$5.48.

Mr. Kitchel: That is all.

Mr. Persinger: Just a moment. I have two more questions.

Redirect examination:

Q. (By Mr. Persinger) At the time of the strike and after the strike, did you belong to the Union? A. Yes, sir.

Q. And what— A. Wait just a moment. When I was— When I got out of work I belonged to the Union in this way: That we was allowed unemployment stamps in our book.

Q. That kept you in good standing? A. Yes, sir.

Q. What was your last job with Phelps Dodge? A. Motorman.

Q. What was the rate of pay on that? A. Well, it's two bits a day more than miners make, I think.

Q. In other words, about \$5.24 or \$5.25? A. Yes, sir.

Mr. Persinger: That is all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the Union? A. I was a charter member.

Q. Well, when was that? A. September the—same date in September, 1933.

Q. Have you been a member continuously since that time? A. Yes, sir.

Q. Have you ever held any office in the Union? A. I have been on the sick committee and I have been on the

*Vernon Dell Curtis—For National Labor Relations Board—
Redirect.*

grievance committee, and I am on the grievance committee now, and I have been on various social committees.

Q. When were you first on the grievance committee? A. About three months ago.

Q. Did you hold any executive position or committee position while you worked for the Phelps Dodge Company?

A. Not as an executive; just the sick committee and the social committee.

Trial Examiner Kennedy: That is all.

Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing more.

Trial Examiner Kennedy: Does either party want this witness back?

Mr. Persinger: No, sir.

Trial Examiner Kennedy: You are permanently excused.

(Witness excused.)

Trial Examiner Kennedy: Mr. Persinger, I would like to get your theory as to this type of employee, or this type of complaining witness. As I get it from his testimony, he was not an employee of the Phelps Dodge Company during the strike. What kind of relief can the Board give a man in this position?

Mr. Persinger: As a matter of fact, Mr. Examiner, I haven't gone particularly into the question of relief. I have gone solely into the question of Section 83. I think the evidence shows that he was not reinstated following his picket duty because he was a member of the union, and because he had been on the picket line, which is a violation of Section 83.

As to what remedy the Board can give him, as I say, I haven't given it any particular thought as yet.

Trial Examiner Kennedy: You don't take the

*Grover Cornett—For National Labor Relations Board—
Direct.*

position that he was an employee under the definition of the Act, do you?

Mr. Persinger: No, he was not an employee at the time of the strike or after.

Trial Examiner Kennedy: Very well. Proceed.

Mr. Persinger: Call Mr. Grover Cornett.

GROVER CORNETT, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Grover Cornett.

Trial Examiner Kennedy: Mr. Persinger, I believe this man's name is spelled "C-o-n-n-e-t-t" in the minute charge.

Mr. Persinger: There are a number of these names, Mr. Examiner, which are spelled incorrectly in the charge and the complaint, and I expect later to amend that.

Trial Examiner Kennedy: You will be specific about that when you amend the complaint?

Mr. Persinger: Yes, I have all the correct names in the file.

Trial Examiner Kennedy: Very well. Proceed.

Direct examination:

Q. (By Mr. Persinger) Mr. Cornett, were you formerly employed by the Phelps Dodge Corporation? A. I was employed in '29 over a year.

Q. And you were laid off about a year later? A. Yes, sir.

Q. And after that when were you again employed? A. About June 7, '35.

*Grover Cornett—For National Labor Relations Board—
Direct.*

Q. And on June 7, 1935, were you a member of the union? A. Yes, sir.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the first day that you were on the picket line? A. It was on Tuesday, I believe, the second day of the strike.

Q. And what was the last day? A. About a week before the strike was over.

Q. And were you on the picket line frequently during that period? A. Yes, sir.

Q. After the strike was over, did you apply for work with the company? A. I did.

Q. When? A. Well, I don't remember—about a week after the strike was over I applied to Mr. Bateman.

Q. You applied to Mr. Bateman? A. Yes.

Q. Where? A. In his office at the Junction.

Q. In the employment office? A. Yes, sir.

Q. What time of day was it? A. About 9:30.

Q. And was anyone else present? A. No, he was by himself.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance for getting my job back.

Q. And what did he say? A. He said no, there wasn't any chance at all.

Q. Was that all that was said at that time? A. That is all.

Mr. Persinger: I offer as Board's Exhibit 28 in evidence the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 28.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 28.)

Mr. Persinger: The witness is with you.

*Grover Cornett—For National Labor Relations Board—
Cross.*

Cross examination:

Q. (By Mr. Evans) Mr. Cornett, you are related by marriage to J. W. Fisher, the foreman of the Mines Division? A. Yes, sir.

Q. As a matter of fact, you never worked for the company at any time since the 19th day of February, 1930, isn't that a fact? A. Yes, I guess that is right.

Trial Examiner Kennedy: I would like to have that date, please.

Mr. Evans: Since February 19, 1930.

Q. And on June 10, 1935, you applied for employment, but never went to work? A. No, I didn't apply for work on the 10th.

Q. Oh, you were hired on the 8th to go to work on the 10th? A. The 7th.

Q. On the 7th? A. I believe that is the date.

Q. Are you sure whether it was the 7th or the 8th?

A. Well, I am not exactly sure whether it is the 7th or 8th.

Q. Was it on a Saturday? A. On Friday.

Q. On Friday? A. Friday that I got hired.

Q. But you never reported for work or went to work?

A. No.

Q. And you haven't at any time been employed by the company since June 7, 1935? A. No.

Q. Are you working at the present time, Mr. Cornett?

A. Yes, I am working at the present time at the Denn.

Q. Shattuck Denn? A. Yes, sir.

Q. What is your job there? A. Tool nipper.

Q. Do you receive mucker's rate? A. Miner's.

Q. Miner's rate? A. Yes.

Q. \$5.48 at the present time? A. Yes, sir.

Q. How long have you been employed at the Shattuck Denn? A. About a year and six months, I guess. About a year and a half, something like that, I am not sure.

*Grover Cornett—For National Labor Relations Board—
Cross.*

Q. Do you recall at all the month in which you went to work for them? A. It was in May, in '36, I believe.

Q. In May of 1936? A. Yes, sir.

Q. And you worked continuously for the Shattuck Denn since that time, is that correct? A. Yes, sir.

Q. Who did you work for before you went to work for the Shattuck Denn? A. Nobody. I wasn't employed.

Q. You didn't have any employment then from June, 1935, we will say, until you went to work for Shattuck Denn? A. No.

Q. Did you work on relief? A. Yes.

Q. Continuously during that period? A. Yes.

Q. How many days a month? A. I don't remember exactly how many days.

Q. About what were you getting each month from relief? A. I don't remember how much it was, but I know it wasn't very much. It wasn't enough to live on.

Mr. Evans: I think that is all.

Trial Examiner Kennedy: Is that all?

Mr. Persinger: That is all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the union? A. Well, I have been a member of the union since I was employed, since I first came to town?

Q. Well, when was that? Give us the year and the month. A. Well, I don't remember. I was a member of the union when I first started here.

Q. When did you first go to work for Phelps Dodge? A. '29.

Q. Were you a member of the Union then? A. No.

Q. When was it,—'33, or what year, that you joined the Union? A. '33, around there some place.

*Martin Vaclav—For National Labor Relations Board—
Direct.*

Q. You have been a member continuously since then?
A. Yes, sir.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Persinger: Mr. Vaclav.

MARTIN VACLAV, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Martin Vaclav.

Direct examination:

Q. (By Mr. Persinger) Mr. Vaclav, were you formerly an employee of Phelps Dodge Corporation? A. Yes, sir.

Q. Prior to that did you work for the C. & A.? A. Yes, sir.

Q. When did you go to work for the C. & A.? A. 1927.

Q. At the time of the merger were you transferred to the payroll of Phelps Dodge? A. Yes, sir.

Q. When did you cease to work for Phelps Dodge? A. June 10th.

Q. What year? A. 1935.

Q. Between 1927 and 1935 had you worked continuously, or had you had layoffs? A. I worked continuously.

Q. What job did you have in June, 1935? A. I was a miner.

Q. At that time were you a member of the Union? A. Yes, sir.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

*Martin Vaclav—For National Labor Relations Board—
Cross.*

Q. Do you remember the first day you went on the picket line? A. The morning of June 10.

Q. That was the day the strike started? A. Yes, sir.

Q. What was the last day? A. I believe the last day was the latter part of July.

Q. After the strike was over did you apply to the Company for reinstatement at any time? A. Yes, sir.

Q. When? A. The latter part of August.

Q. In other words, within a week or so after the strike was over? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. At the Employment Office.

Q. What time of day? A. Well, it was about 2:00 o'clock in the afternoon.

Q. Was anyone else present? A. No, sir.

Q. What did you say to him? A. I asked him for employment, and he told me that there was no need for me to come up there because he couldn't give me a job because I was one of the men that come out on strike.

Q. Anything further said at that time? A. No, sir.

Q. Have you applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 29 the employment record of the witness, in evidence.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: Received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 29.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) What time of day did you say it was when you called on Mr. Bateman? A. 2:00 o'clock.

*Martin Vaclav—For National Labor Relations Board—
Cross.*

Q. Was anybody else there? A. No, sir.

Q. Was anybody rustling? A. No, sir.

Q. You say it was in the latter part of August? A. Yes, sir.

Q. Do you remember the day of the week? A. No, sir.

Q. You do remember the conversation very clearly, though, don't you? A. Yes, sir.

Q. You couldn't hazard a guess as to what day of the week it was, or approximately what date? A. No, I couldn't.

Q. Do you remember when the picket line disbanded? A. Yes, sir.

Q. What date was that? A. 24th of August.

Q. Wasn't it the 21st of August? A. No, sir.

Q. Were you in attendance at Union meetings during the month of August, 1935? A. No, sir.

Q. Were you in the picket line every day during the course of the strike? A. No, sir.

Q. What was the last day you were in the picket line? A. It was the latter part of July.

Q. Did you leave the district in the latter part of July, 1935? A. Yes, sir.

Q. Where did you go? A. I went to Colorado.

Q. Whereabouts in Colorado? A. Denver.

Q. Did you get a job there? A. No, sir.

Q. How long did you stay there? A. I stayed there in Denver about two days.

Q. Then what did you do? A. Just traveled.

Q. When did you get back to the district? A. I got here right the latter part of August. I don't remember exactly what date it was.

Q. Would you say that this interview you had with Mr. Bateman was in the last week of August? A. Yes, sir.

Q. That would be, then, sometime between the 24th of August and the 1st day of September? A. Yes, sir.

*Martin Vaclav—For National Labor Relations Board—
Cross.*

Q. Do you remember whether it was the first part of the week or the last part of the week that you returned from Denver? A. I don't remember; I couldn't say whether it was the first or last part.

Q. You haven't any idea what day of the week it was that you called on Mr. Bateman? A. No, sir.

Q. After your return, Mr. Vaclav, did you obtain a job anywhere? A. Not in the state of Arizona, no.

Q. Where did you obtain one? A. When I left here and went back to Colorado.

Q. Back to Denver? A. No.

Q. Whereabouts? A. I went to Rosita.

Q. Rosita, Colorado? A. Yes, sir.

Q. Was that your home before you came here? A. Yes, sir.

Q. Did you obtain employment at Rosita, Colorado? A. Yes, sir.

Q. What doing? A. Working on a farm.

Q. What was the date, approximately, when you started working on the farm? A. I would say it was right around the middle of September sometime.

Q. The middle of September, 1935? A. Yes, sir.

Q. Were you employed as a farm laborer? A. Yes, sir.

Q. How long did you work at that job? A. I worked there until about November sometime.

Q. Sometime in November of 1935? A. Yes.

Q. Then what did you do? A. I didn't do anything; just laid around.

Q. Did you stay at Rosita? A. Yes, sir.

Q. How long? A. Until the fall of '36.

Q. You had no employment, then, from November, 1935, when you quit your job on a farm, and until your return here to the district? A. Well, I worked just on odd jobs; just off and on.

Q. In Colorado? A. Yes, sir.

*Martin Vaclav—For National Labor Relations Board—
Cross.*

Q. Can you tell us what those jobs were? A. Well, I worked for a fellow there on a lease. I worked there about a month and a half.

Q. On a mining lease? A. Yes, sir.

Q. What was your job with him? A. I was running the machine.

Q. When did you start that work? A. I believe that was in January, '36.

Q. January of 1936? A. Yes, sir.

Q. What rate of pay did you receive? A. \$5.00 a day.

Q. Were you working 7 days a week? A. No; 6.

Q. 6 days a week? A. Yes, sir.

Q. And you say you worked on that job for about a month and a half? A. About a month and a half.

Q. What was the name of your employer? A. C. J. Caldorolia.

Q. What was that last name? A. Caldorolia.

Q. You might spell it for the Reporter. A. C-a-l-d-o-r-o-l-i-a.

Q. How did you happen to quit that job? A. We quit the lease, quit work.

Q. All right. What was the next odd job you had there in Colorado? A. Then I went back to work on a farm.

Q. The same farm you worked on before? A. Yes, sir, same farm.

Q. And how long did you continue on that job? A. Well, I just worked there just off and on until I believe it was in the Fall of '36.

Q. And at that time you left Colorado? A. Yes, sir.

Q. Where did you go from there? A. Came to Bisbee.

Q. Did you obtain employment when you returned to Bisbee in the Fall of 1936? A. Yes, sir.

Q. With whom? A. Shattuck Denn.

Q. What was the date of your employment? A. I don't remember, but it was in, I believe, January in '37 when I got the job.

*Martin Vaclav—For National Labor Relations Board—
Cross.*

Q. Did you start in as a miner with the Shattuck Denn?

A. No, sir.

Q. What was your job? A. Hired out as a mucker.

Q. What was your pay at that time? A. I believe it was \$4.48.

Q. \$4.48? A. \$4.84, I believe it was.

Q. \$4.84. How many days a week were you working in January, 1937, when you first started with the Shattuck Denn? A. Seven days a week.

Q. What was your rate of pay at the time you walked out on June 10, 1935? A. \$5 a day.

Q. How many days a week were you working at that time? A. Five days a week.

Q. Have you been in the employ of the Shattuck Denn Mining Company continuously since 1937? A. No, sir.

Q. Are you employed by the Shattuck Denn at the present time? A. Yes, sir.

Q. Well, from January, 1937, how long did you work for the Shattuck Denn Mining Company? A. I worked until in May.

Q. May of 1937? A. Yes, sir.

Q. Do you remember the date? A. No, I don't.

Q. Why did you leave that job? A. I went home.

Q. You went back to Rosita, Colorado? A. Yes, sir.

Q. You voluntarily quit your job at the Shattuck Denn? A. Yes, sir.

Q. What did you do while you were in Rosita, Colorado, the second time? A. Just visited.

Q. How long were you there? A. I stayed there until in October.

Q. October of 1937? A. Yes, sir.

Q. Then what did you do? A. Come back to Bisbee.

Q. Did you get employment when you came back? A. Yes, sir.

Q. With whom? A. Shattuck Denn.

Q. What job? A. Miner.

*Martin Vaclav—For National Labor Relations Board—
Cross.*

Q. What was your rate of pay when you started? A. \$6.

Q. How many days a week? A. Six days a week, I believe.

Q. Have you been employed continuously since that date with the Shattuck Denn Mining Company? A. Yes, sir.

Q. And are you employed at the present time by the Shattuck Denn Mining Company? A. Yes, sir.

Q. What is your present job with the Shattuck Denn? A. Miner.

Q. And what is your present rate of pay? A. \$5.48.

Q. Have you ever been employed by Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. And you are not an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You received how much at the time you left Phelps Dodge? What was your pay? A. \$5.

Q. \$5 a day as a miner? A. Yes, sir.

Q. And you are now employed as a miner at Shattuck Denn? A. Yes, sir.

Q. Which job do you consider preferable? A. Well, I couldn't say.

Q. Do you see anything different between the two jobs? A. No, there isn't much difference.

Q. Just as soon work one place as the other? A. Well, I believe I would prefer working for the P. D.

Q. You would rather go back to the P. D.? A. Yes, sir.

Q. Would you rather go back if it involved a cut to \$5 a day? A. No, I don't think I would go back and be cut. I would rather work for the standard rate of wages.

*Monte Reed—For National Labor Relations Board—
Direct.*

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

MONTE REED, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Monte Reed.

Direct examination:

Q. (By Mr. Persinger) Mr. Reed, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by Phelps Dodge? A. In 1924.

Q. And you worked for them how long at that time? A. Three or four months.

Q. And you were next employed by them when? A. 1925.

Q. And you worked how long at that time? A. Up until 1930.

Q. And after 1930, you were next employed when? A. I believe it was '33.

Q. Do you remember the month? A. No, I don't.

Q. And beginning in '33, you worked how long? A. Up until 1935.

Q. What time in 1935? A. June 11th.

Q. June 11th? A. Yes, sir.

Q. In June, '35, were you a member of the union? A. No, sir.

Q. Did you go out on strike? A. Yes, sir.

*Monte Reed—For National Labor Relations Board—
Direct.*

Q. And you went out the day after the strike started?
A. The day after the strike started.

Q. Were you on the picket line at any time? A. Yes, sir.

Q. When was the first day you were on the picket line?

A. June 11th.

Q. And that is the day you went out? A. Yes, sir.

Q. What was the last day you remember of having been on the picket line? A. June 26th.

Q. June 26th? A. Yes, sir.

Q. And during that period were you on the picket line continuously or frequently? A. Quite frequently.

Q. During the time you were on the picket line did you get a pay check? A. Yes, sir.

Q. When? A. June 21st.

Q. Was that the regular payday? A. Yes, sir.

Q. Did you speak with any official of the company, or supervisor, when you got the pay check? A. Yes, sir.

Q. Whom? A. Murray Bateman.

Q. And where did you see him? A. In his office.

Q. In his office? A. Yes, sir.

Q. And what was said at that time? A. Well, I went up and got this slip to get my pay check, they won't give me a pay check without a slip, and I went to Murray Bateman to get the check, and Murray Bateman asked me if I had moved my clothes out of the locker in the change room, and I said "No, I haven't." I said, "The strike isn't over yet and I haven't moved them."

And he said, "Well, we want you to clean them out."

He said, "Because as far as you fellows are concerned, the strike is never going to be ended for you."

Q. Anything further said at that time? A. Not a thing.

Q. After the strike was over did you apply for work with the company? A. Not until 1936.

Q. And what time in '36? A. Along in the first part of June, I believe, the month of June.

*Monte Reed—For National Labor Relations Board—
Cross.*

Q. To whom did you apply? A. Keith Davey.

Q. Who was Keith Davey? A. Keith Davey was the Employment Agent in Murray Bateman's place while he was off on vacation some place.

Q. Where did you meet Keith Davey? A. I met him at a bar up on Brewery Gulch.

Q. And was anyone else there? A. How is that?

Q. Was anyone else there? A. Yes, there was one other man with me.

Q. Who was that? A. August Gallagher, better known as Hugh Gallagher.

Q. What time of day was that? A. Along about 7:00 o'clock in the evening.

Q. What did you say to Mr. Davey? A. I just asked if there was any chance of going to work for the Queen again. If there was, I would come down and rustle.

Q. What did he say? A. He said there never was any chance for me to come back there and go to work, and no other fellows that was out on strike.

Q. Anything further said? A. No, outside of just talking, was all.

Q. Have you applied since then? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 30, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit No. 30.

(Thereupon the document above referred to was received in evidence and marked as "Board's Exhibit No. 30.")

Mr. Persinger: The witness is with you.

Cross examination:

Q. (By Mr. Evans) You drew down your pay on June 21, '35, did you not? A. Yes, sir.

*Monte Reed—For National Labor Relations Board—
Cross.*

Q. You are not employed by Phelps Dodge Corporation at the present time? A. No, sir.

Q. And you have not been an employee of that company since June 11, 1935, have you? A. No, sir.

Q. Where are you working at the present time? A. Denn mine.

Q. That is, the Shattuck Denn Mining Company? A. Yes, sir.

Q. When did you go to work for the Shattuck Denn? A. August 14, 1936.

Q. You have worked there continuously since that time? A. Yes, sir.

Q. What kind of work are you doing? A. Mining.

Q. Do you receive \$5.48 a day? A. Yes, sir.

Q. When did you say you went to work for the Shattuck Denn? A. August 14, 1936.

Q. From June 11, 1935, until August 14, 1936, did you work any place else? A. Only on the W. P. A.

Q. You were employed on W. P. A. work during that time? A. Yes, sir.

Q. How many days a week? A. Well, just so many days a month, is what it was.

Q. How many days a month? A. Well, I don't rightly remember. At the last there they was cut down to a little better than 8 days a month.

Q. But you got more than 8 days during the greater part of that period? A. Yes.

Q. And the pay was \$4.00 a day? A. No; \$50 a month.

Q. \$50.00 a month? A. Uh-huh.

Q. Were you on a salary? A. No. That's the way they pay on all that W. P. A. work; so much—whatever you are hired out as.

Q. You participated in the attack on Larry Kuder during the strike, did you not? A. No, sir.

Q. You were there at the time, were you not? A. Yes, sir.

*Monte Reed—For National Labor Relations Board—
Cross.*

Q. Did you not—Do you mean to say that you did not participate in the attack on him? A. I did not.

Q. Who did? A. Jack Cornett.

Mr. Persinger: Just a moment, Mr. Examiner. I object to that question.

Trial Examiner Kennedy: Overruled.

Q. (By Mr. Evans) Where were you from June 26, 1935, on? A. I was in the hotel, upstairs, there—the jail.

Q. Larry Kuder was an employee of the company, was he not? A. I believe he was.

Q. How did you know that Keith Davey was working as an employment agent? A. Just through hearsay.

Q. As a matter of fact, he is an engineer working for the company, is he not? A. He has been.

Q. You do not know of your own knowledge whether he was an employee acting as employment agent at the time you saw him? A. He told me that he was when I asked him.

Q. That was up on Brewery Gulch? A. Yes, sir.

Q. What mine were you working in—that is, what shaft—at the time you left the employ of the company on June 11th? A. Junction.

Q. You were working at the Junction? A. Yes, sir.

Q. What rate of pay were you receiving? A. Miner's pay.

Q. That was about \$5.00 a day at that time? A. \$5.00 at that time.

Q. You were employed as a miner at that time? A. Yes, sir.

Q. You were prosecuted for the assault on Kuder, were you not? A. I was acquitted of it.

Q. As a matter of fact, there was a hung jury as a result, was there not? A. Hung jury in the first case, yes.

Q. And the case was then dismissed? A. The case was dismissed for lack of evidence.

*Clyde Bigelow—For National Labor Relations Board—
Direct.*

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You are now employed as a miner at the Shattuck Denn, is that right? A. Yes, sir.

Q. \$5.48 a day? A. Yes, sir.

Q. How many days a week do you work? A. 6 days a week.

Q. 6 days a week. How many days a week did you work at Phelps Dodge? A. At that time they was only working 5 days a week.

Q. And you were paid \$5.00 a day? A. Yes, sir.

Q. Which job do you consider preferable? A. Well, at the rate of pay—if the rate of pay was the same, why, I would prefer the Shattuck Denn.

Q. You would prefer Shattuck Denn. That is where you are now? A. Yes, sir.

Trial Examiner Kennedy. That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Bigelow.

CLYDE BIGELOW, a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Clyde Bigelow.

Direct examination:

Q. (By Mr. Persinger) Mr. Bigelow, were you formerly employed by the Phelps Dodge Corporation? A. Yes.

*Clyde Bigelow—For National Labor Relations Board—
Direct.*

Q. When were you first employed by Phelps Dodge? A. Well, I was first employed at about 1918, as near as I can remember.

Q. Did you work continuously off and on after that? A. Off and on.

Q. Do you remember about when the merger took place between the C. & A. and Phelps Dodge? A. Do I remember what?

Mr. Persinger: Strike the question.

Q. Were you working for Phelps Dodge in 1931? A. Yes, sir; I was working when the merger took place.

Q. You were? A. Yes.

Q. Since that time how long did you work? A. Well, I worked up until '31; I was laid off for about 8 days, and then worked again,—I was called back and worked three or four months, and then was laid off again.

Q. And then back how much later? A. Then I went back in '33.

Q. And after '33 you worked how long? A. Continuous until the strike.

Q. How did they call you back in '33? A. By a letter.

Q. Do you have that letter with you? A. No, I haven't.

Q. In June of '35 were you a member of the Union? A. No, sir.

Q. Did you go out on strike with the Union? A. Yes, sir.

Q. Were you on the picket line? A. No, sir.

Q. After the strike was over, did you apply for work with the company? A. Yes, sir.

Q. When? A. Well, I applied in September, after the strike was over—the month of September.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where? A. In the employment office.

Q. What time of day? A. Oh, it was about 9:30 or 10:00 o'clock. It was after the majority of the crowd had left.

Q. Was anyone else there when you went in? A. Well,

*Clyde Bigelow—For National Labor Relations Board—
Direct.*

there was the insurance writer in his end of the office. He had an office at the end where the insurance writer always stayed, but there was no one in Bateman's office.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance for a job.

Q. What did he say? A. "No," they hadn't reinstated any of the striking miners yet.

Q. Anything further said? A. No.

Q. Have you applied since that time? A. I applied again in '36, about December.

Q. To whom did you apply at that time? A. Mr. Bateman.

Q. Where? A. At the employment office.

Q. What time of day was it? A. Well, it was around about 10:00 o'clock.

Q. Anyone present at that time? A. Well, no. There wasn't anybody but what was in the outer office there. There was nobody in Mr. Bateman's office.

Q. What did you say to Mr. Bateman at that time? A. I asked him if I could get a job now, and he said, "What? Back again?"

I said, "Yes."

He said, "Well, you're a glutton for punishment."

"Well," I said, "what have they decided to do?"

"Well," he said, "we ain't going to reinstate any of the men."

"Well," I said, "will there be any use of me rustling again?"

And he said, "No."

Q. Anything further said at that time? A. No.

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 31 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 31.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Kitchel) Did you state, in answer to Mr. Persinger's question, that you were or were not a member of the union on June 10, 1935? **A.** I was not a member.

Q. You were not a member? **A.** No, sir.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? **A.** No, sir.

Q. Have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? **A.** No, sir.

Q. What was your job with the Phelps Dodge Corporation prior to the time you walked out, just immediately prior? **A.** I was a miner.

Q. Stope miner? **A.** Yes, sir.

Q. And where were you working? **A.** Working in the Campbell shaft.

Q. What was your rate of pay at that time? **A.** \$5 a day.

Q. And you were working how many days a week? **A.** Five days.

Q. Have you obtained employment since June 10, 1935? **A.** Well, I have obtained temporary employment; jobs I knew wouldn't last long.

Q. Well, let's start with June 10, 1935, and run down and see what you have had. **A.** Well, after we went out on the strike, I went and worked on relief for a period of—I don't know, just about three months, and then I got a job with the Government on a planning survey, and that job lasted three months.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Q. Where does that take us to? A. That is still in the county, it lasted about three months.

Q. And that takes us up, we are still in 1935? A. In that—no, that wouldn't be in '35.

Q. That would take us up, then, to January or February of 1936? A. Yes.

Q. Just what was that job, please? A. Well, I was rodman on the remapping survey in the County of Cochise. We were mapping out all roads in the County of Cochise for the Government.

Q. That was not a relief job, was it? A. Yes, sir, it was through the National Re-employment Agent.

Q. How much did you get paid on that job? A. A hundred dollars a month.

Q. A hundred dollars a month? A. Yes.

Q. And you say you had that job about three months? A. Yes, sir.

Q. Could you tell us approximately when you started on that job? A. Well, I am afraid I couldn't give a very good date.

Q. I know you can't recall the exact date, Mr. Bigelow. Perhaps you can date it back to August, 1935. Were you in the picket line through the strike? A. No, sir.

Q. Were you in the picket line at any time during the strike? A. No, sir.

Q. Are you familiar with the circumstances surrounding the disestablishment of the picket line in August of 1935? A. No, I was—I wasn't in town, when the picket line was broke up.

Q. Whereabouts were you? A. I was rustling a job in Texas.

Q. Whereabouts in Texas? A. Well, West Texas, around Big Springs and Odessa and in that part of the country.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Q. Did you get a job over there? A. No. I come back then and took a civil service examination for the Border Patrol.

Q. When did you come back? A. I came back about the 17th of September.

Q. And you took the civil service examination right away when you came back? A. Yes, sir. I come back—I couldn't find anything out there and I come back for that sole purpose of taking that examination.

Q. When was it that you made this first application, Mr. Bigelow, to Mr. Bateman that you referred to? A. After I took the examination. It was within two or three days.

Q. Did you pass that examination? A. No, sir.

Q. Well, now, we are up to the latter part of September. Can you estimate now the date upon which you went on this Government job? A. (No response.)

Q. Was it in September or October? A. No, it was further back than that—further ahead than that—it was in about June some time.

Q. June of 1936? A. Yes, sir.

Q. What did you do during that intervening period when you returned from Texas? A. I worked on relief up here.

Q. You had no other regular employment during that time? A. No, sir.

Q. Did you make application for employment at other places other than the Phelps Dodge Corporation? A. Yes, sir.

Q. Where did you apply? A. I applied at several different places. I worked here for a while, checking—paying back bills on a grocery bill up here.

Q. You did work, though, in addition to your relief work? A. Well, I didn't draw no pay. I worked for my groceries up here at Moore's Store for my family.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Q. Then you think it was in June, 1936, that you went on this Government survey job at a salary of a hundred dollars a month? A. Yes.

Q. Then you worked for three months at that? A. Yes.

Q. That would be the months of June, July and August, 1936? A. Yes, sir.

Q. Was that job completed at the end of August? A. Yes, sir.

Q. And the survey was completed? A. It was completed in this county.

Q. Then what did you do after that? A. Well, I went to work for Pleasant-Hasler on a contracting job. I was at Huachuca.

Q. Was that September of 1936? A. Yes.

Q. How long did you work for them? A. I worked about 29 days.

Q. What was your rate of pay on that job? A. Well, I started in at 50 cents an hour and then I raised it up to 65 cents an hour.

Q. How many hours a day? A. Well, we worked 8 hours a day.

Q. And were you working 7 days a week? A. No, we were working 6 days a week.

Q. During the 29-day period that you mentioned? A. Yes.

Q. And then was that job completed about the first of October? A. Practically completed; yes, sir.

Q. Did you quit before the job was completed? A. Well—no, the job wasn't quite completed. Yes, I quit before the job was completed.

Q. You could have had further employment, though, for a while longer? A. Well, for a few more days.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Q. What did you do after that? A. I left for Northern California.

Q. Did you obtain employment there? A. Yes, sir.

Q. What doing? A. I was a miner.

Q. Whereabouts? A. In the Mother Lode country, about 14 miles out of Jackson, Amador City.

Q. What was the name of your employer? A. The original Amador Gold Mining Company.

Q. You were employed as a miner? A. Yes, sir.

Q. That would be in about October, or probably November, of 1936? A. Yes, sir.

Q. What was your pay there? A. \$4.00 a day when we first started, and then after we was there about a month the company raised the wages to \$4.50 a day.

Q. How many hours a day—I mean, how many days a week did you work? A. We was working 6 days a week.

Q. How long did you stay on that job, Mr. Bigelow? A. I stayed on there, oh, about two months, I guess, or pretty near two months.

Q. How many hours a day were you working there? A. 8 hours.

Q. You say you stayed on there about three months?

A. About two months.

Q. Two months? A. Yes.

Q. That must take us pretty near up to the first of 1937? A. Almost to the first of 1937.

Q. Then what did you do, Mr. Bigelow? A. Then I came back to Bisbee.

Q. Have you had any employment since you returned to Bisbee? A. Yes, sir. I worked at the Shattuck lease.

Q. The Shattuck lease? A. Yes, sir.

Q. When did you start work at the Shattuck lease? Was it in January, 1937? A. No, it was later—it was in about February that I started at the Shattuck lease.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Q. How did you happen to leave that job in Northern California? A. On account of contract trouble.

Q. On account of what? A. Contract trouble. I had trouble over a contract that I was going to take, and we had a disagreement and I left.

Q. You had a disagreement with the company you were working for? A. Yes, sir.

Q. Were you discharged? A. No, sir.

Q. You just quit? A. Yes, sir.

Q. What job were you working at when you were with the Shattuck lease? A. I was a cager and a shaftman.

Q. How long did you work on that job? A. Approximately 4 months.

Q. What was your rate of pay? A. We was in the— When I was in the shaft I was getting \$6.10 a day. When I was caging I was getting \$5.50.

Q. \$5.50? A. Yes.

Q. How many days a week were you working? A. We was working 7 days a week in the shaft, and when I went to caging we was working 6.

Q. And you worked 4 months, approximately. That would be the months of February, March, April and May of 1937? A. Yes.

Q. Is that about right? A. Just about.

Q. Why did you quit that job? A. There was a layoff.

Q. What employment have you had since then? A. Well, at present— The present job I am on now is at Wootten's Hardware.

Q. Have you been on that ever since you were laid off the Shattuck lease? A. No, I was off about two months after that. I didn't—I worked then a few times on relief. I got back on the relief and worked a few turns there with the relief, and then I got this job with Wootten's.

Q. What is your job with Wootten's Hardware Company? A. Well, plumber's helper, and I do some plumbing.

*Clyde Bigelow—For National Labor Relations Board—
Cross.*

Q. Are you on a day basis or a salary basis? A. I am on an hourly basis.

Q. On an hourly basis? A. Yes.

Q. How much do you get an hour? A. Well, when I am helping I get 50 cents an hour, and when I am doing plumbing work I get 87 cents an hour.

Q. 87 cents an hour? A. Yes.

Q. What were you averaging in the way of hours per day on that job? A. Well, I wouldn't average—in the last three months I wouldn't average over \$20 a week.

Q. How about the periods prior to the last two or three months? A. Well, there for a while we averaged about \$36.00.

Q. \$36.00 a week? A. Yes. But that didn't last very long.

Q. But during that period you were working four weeks out of every month? A. Yes.

Q. So that you were getting about \$144 a month? A. Yes. The last week I drew \$9.00—or, \$12.00.

Q. Have you ever worked for the Shattuck Denn Mining Company? A. No, sir.

Q. Did you ever apply for work there? A. Yes, sir.

Q. Were you rejected? A. I was turned down on a medical examination twice.

Q. What was the reason for your being turned down, Mr. Bigelow? A. X-ray pictures—silicosis.

Q. Would you want to go back to work underground again? A. Yes, if they would send for me.

Q. In spite of your condition? A. Yes, sir.

Q. You would go back if they sent for you? A. Yes.

Q. What do you mean by that? A. Well, I don't mean that I would go rustling them again.

Q. Do you recall Mr. Luther Henderson? A. Yes, sir.

Q. When did you leave for Texas after you worked out on June 10th? A. Well, I left in August—early in August. I only stayed down there about 10 days.

*Clyde Bigelow—For National Labor Relations Board—
Redirect.*

Q. Down in Texas? A. That's all, 10 or 12 days; something like that.

Q. But you testified, I believe, that you were not in the picket line? A. I never was in the picket line.

Q. Were you mixed up in any fights during the course of the strike? A. No, sir; no, sir.

Q. Didn't you and Mr. Henderson both spend time in jail for a fight? A. Not me; no, sir.

Mr. Kitchel: I think that is all.

Redirect examination:

Q. (By Mr. Persinger) You referred to a job on which you had some contract trouble. Where was that job? A. Amador City; the original Amador Mining Company.

Q. What state? A. California.

Q. What sort of a job was it? A. I was a miner; drift driving.

Q. When was the last time you were turned down on a medical examination by Shattuck Denn? A. Oh, about 5 months ago.

Q. When was the first time? A. Well, 2 months before that; 2 or 3 months before that.

Q. This mine that you had some contract trouble with, do you know if it is still operating? A. No, sir; it is closed down.

Q. Do you know when it closed down? A. No, I couldn't say when it did close down. It wasn't long after I left there that it closed down.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Did you ever join the Union?

The Witness: No, sir.

Trial Examiner Kennedy: You never belonged?

The Witness: No, sir.

**Milton Wynn—For National Labor Relations Board—
Direct.**

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Trial Examiner Kennedy: We will take a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed as follows):

Trial Examiner Kennedy: (After recess) The hearing will be in session.

MILTON WYNN, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

A. Milton Wynn.

Direct examination:

Q. (By Mr. Persinger) Mr. Wynn, were you formerly employed by the Phelps Dodge Corporation? **A.** I was; yes, sir.

Q. When were you first employed? **A.** Well, it was around '24 or '25—I was employed for about 3 months at one time.

Q. You were in school at that time? **A.** Yes, sir.

Q. And since you left school, when were you first employed? **A.** '34; I think it was around June, I think it was; it might be a little bit before; I am not sure.

Q. And at that time what job did you start in at? **A.** As a mucker.

*Milton Wynn—For National Labor Relations Board—
Direct.*

Q. And you were employed continuously for how long?
A. For a little over a year.

Q. Up to the time of the strike? A. Up to the time of the strike, a little over a year. I think it was a year and a few days, to be exact.

Q. And just before the strike, what job did you have?
A. I was—I went mining, and then after that I went on the Gunito Machine.

Q. What rate of pay is in effect on the Gunito Machine?
A. I think it was \$5.23 that I was getting.

Q. Was that the same as a miner's rate at that time?
A. No; the miners were around \$5.00, I think it was.

Q. In June, 1935, were you a member of the Union? A. No, I was not; I dropped out.

Q. Did you go out on strike with the Union? A. Yes, sir.

Q. Were you on the picket line? A. I went down more out of curiosity once or twice. I didn't actually take any part in the picketing. I stayed away from it most of the time.

Q. And after the strike was over did you apply for reinstatement with the company? A. Well, I waited for Bateman and I caught him around the garage there. I had had a letter from a friend of mine—a friend of mine had a letter from Idaho, and he was thinking of going up there, and this fellow knew I was going up there with him, and he wrote to this fellow that if I was coming up I had better get a service letter, that they were having the same trouble up there. So I hit him up and asked him if there was any chance of going to work, and he said, "No."

Q. What did Mr. Bateman say? A. He said, "No." And then I asked him about a service letter and he said, "No," to that, too.

*Milton Wynn—For National Labor Relations Board—
Cross.*

Q. That was all, that was said then? A. That was all that was said.

Q. Have you applied at any time since? A. No, I haven't.

Mr. Persinger: I offer as Board's Exhibit 32 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection; no.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 32.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Evans) You worked for the Company about a year, Mr. Wynn? A. Yes, sir.

Q. Before you went out? A. Yes, sir.

Q. When was it that you saw Mr. Bateman? A. Why, it was a week or two after it was called off. I don't know for sure; I couldn't say. I waited for him down there—I didn't want to go down to the Employment Office; I didn't know what kind of a reception I would get, and I thought I could see him just as well as I could there, you know, when he parked his car there. He usually parked it there before he went up to the hotel.

Mr. Evans: May we have this off the record for a moment?

Trial Examiner Kennedy: Off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: On the record.

*Milton Wynn—For National Labor Relations Board—
Cross.*

Cross examination (continued):

Q. (By Mr. Kitchel) You say that was a week or two after? A. I think it was, Mr. Kitchel. I couldn't say. I think it was; yes, sir.

Q. What did you do after you walked out on June 10, '35, Mr. Wynn? A. I—— Oh, I didn't do much; I laid around for a while. After I had seen Bateman I took a trip and I went over in that fall, I think it was; I went up to around Kingman and Oatman. I took a trip up around there, and then I worked at Miami for about a month and a half.

That was in, I think, I quit there right around—right in around November, and then I worked at Parker Dam for a week.

Q. Let's get this first job. You say that was at Miami? A. Miami; yes, sir.

Q. For whom were you working there? A. Inspiration. I worked there around a month.

Q. Inspiration Copper Company? A. Yes, sir.

Q. When would that be, Mr. Wynn? A. I think it was, to the best of my knowledge—I think it was around November.

Q. Of 1935? A. It was after the strike, yes.

Q. Yes. What was your job with the Inspiration? A. I was what they called a "raise runner." That was, in other words—it was loading trains. They called it "swamping on the motor."

Q. What was your rate of pay with them? A. It was—well, I was supposed to be getting \$5, but there was some argument over the rating, and I was only getting \$4.40 then, and that's why I quit.

Q. You worked there about a month? A. A little over a month; around in that vicinity.

Q. A little over a month. How many days a week were you working? A. Six, I think. I think it was six days.

*Milton Wynn—For National Labor Relations Board—
Cross.*

Q. Then when you left Miami, what did you do, Mr. Wynn? A. I came over here and I worked extra around here. I was tending bar, and then I left here and went to Parker Dam, and I worked there five days and a half, I think it was.

Q. When was that? A. That was around December.

Q. Of 1935? A. Yes, sir. I think it was then.

Q. For whom were you working at Parker Dam? A. I forget the name of the construction outfit. I don't know who it was.

Q. What kind of a job did you have? A. I was tending chuck.

Q. Tending what? A. Chuck tender on the machines.

Q. What pay did you receive the five days and a half you were there? A. There was no five days and a half. It was a 40-hour week we worked. I think it was a 40-hour week, or maybe it was a 30-hour. I think we worked five 6-hour shifts. I think that's the way it was—five 6-hour shifts. We worked 33 hours a week. I couldn't be positive.

Q. What was the pay, do you remember? A. Well, I think it was around 70-some-odd cents an hour. I think that is what it was, 72 or 75; I couldn't be sure.

Q. Isn't it true, Mr. Wynn, that at the times that you were here between those trips and after you walked out on June 10, 1935, that you were generally tending bar? A. No, not all the time I was not. I worked one day a week; maybe two days; maybe around a holiday I would get in a day or two days, but I wasn't steady; no, sir.

Q. For whom did you work when you did that work? A. I worked for Dan-Peccola, and then I worked once in a while for Fuller.

Q. Well, after your work on the Parker Dam did you voluntarily leave that job? A. Yes, sir; I did.

Q. Then what did you do? A. I came back here and then I was working two or three days a week, or whatever

*Milton Wynn—For National Labor Relations Board—
Cross.*

I could, around here up until now. Then a year previous to this last January I have been working steady, up until the first of the year and during the recession, when I was laid off. I worked a day or two a week now.

Q. Is that for Mr. Peccola? A. Yes, sir.

Q. What is your pay there? A. I was getting—last Summer I was getting \$45 a week—\$40 or \$45, around there. When I quit I was getting \$25, or when I was laid off I was getting \$25.

Q. \$25 a week? A. Yes, sir; when I was laid off.

Q. When you were last working for the Phelps Dodge Corporation, you were working on mucker's pay, is that correct? A. No, sir. When I came out on strike I was getting \$5.23 a day, I think.

Q. What was your job? A. Gunite machine. I think that was the rate of pay; I am not positive.

Q. And you were working five days a week? A. Yes, sir.

Q. So that your monthly income, at that time, would average a little in excess of a hundred dollars a month? A. Yes, sir.

Q. So you say that you were not a member of the union on June 10, 1935? A. No, sir; I was not.

Q. And that you did not go on the picket line? A. I went down out of curiosity once or twice to see how it was conducted, but I didn't take any active part in trying to stop any men from going to work or discouraging them, or anything like that. My sentiments, though, were with the union.

Q. Where was it you said that you saw Mr. Bateman when you asked him about this letter? A. Angelari's Garage. You know, where he parks his car. I waited for him there. I thought I could see him there as well as I could at the office. I didn't know what kind of a reception I would get there.

Q. You know Mr. Bateman pretty well? A. Yes, sir.

Alexander Kalastro—For National Labor Relations Board—Direct.

Q. You are pretty good friends? A. No, I wouldn't say thick friends. I know him well enough to say "Hello" to him when I see him.

Q. Are you employed at the present time? A. No. I am working the last two days. I am working now like I did before, whenever there is a chance.

Q. At Mr. Peccola's? A. Yes, sir.

Q. Did you attend any union meetings just prior to June 10, 1935? A. No, I did not; no, sir.

Q. When did you become a member of the union? A. Well, right after I went to work I joined the union, and then I paid in dues. I think it was two or three months, and then I dropped out.

Q. That was in 1934? A. Yes, sir.

Mr. Kitchel: I believe that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: I am assuming that all of these witnesses are permanently excused, unless counsel indicate that they expect to call them back.

Mr. Persinger: They are.

Mr. Kalastro.

ALEXANDER KALASTRO, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Alexander Kalastro.

Direct examination:

Q. (By Mr. Persinger) Mr. Kalastro, were you formerly employed by Phelps Dodge Corporation? A. I was.

*Alexander Kalastro—For National Labor Relations
Board—Direct.*

Q. When were you first employed? A. I believe in August of '34.

Q. And you worked how long? A. About a year.

Q. When did you stop? A. August 24th.

Q. When did you stop work? What was the last day you worked? A. Two days after the strike was called.

Q. What was your job when you started? A. Swamper, —pocket man.

Q. What rate of pay was that? A. I believe it was \$4.40.

Q. That was mucker's pay? A. Yes.

Q. What job did you have in June, '35? A. Swamper on a motor.

Q. What does that pay? A. \$5.

Q. Same as a miner? A. Same as a miner.

Q. Were you a member of the union at the time of the strike? A. Yes, I was.

Q. And you worked two days after the strike? A. Yes, sir.

Q. Then you went out? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the first day you went on the picket line? A. The first day after I came out on the strike.

Q. And what was the last day you were on the picket line? A. That was on the day—that was the only day I was on the picket line.

Q. That was the only day? A. Yes, sir.

Q. And after the strike was over did you apply for reinstatement? A. I did.

Q. To whom? A. Murray Bateman.

Q. When? A. The latter part of August, '35.

Q. What time of day was that? A. I presume around 9:00 or 10:00 o'clock.

Q. In the morning? A. Yes, sir.

Q. Where? A. At the Phelps Dodge Employment Office.

Q. Was anyone else present? A. No.

*Alexander Kalastro—For National Labor Relations
Board—Cross.*

Q. What did you ask Mr. Bateman? A. "How about a job?"

Q. What did he say? A. "Nothing doing."

Q. Anything else said? A. Not a word.

Q. Have you applied since that time? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 33 the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 33.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) You are not employed by Phelps Dodge Corporation at the present time? A. No, sir.

Q. You haven't been an employee of the company since approximately June 12, 1935? A. No, sir.

Q. And then when you walked out on June 12, 1935—in other words, you severed your employment relationship with the company at that time, is that correct? A. Yes, sir.

Q. Why did you go out on June 12, 1935? A. I didn't want to discriminate against my fellow-workers.

Q. Why didn't you go out on the 10th, if that is the case? A. I didn't know the outcome of it.

Trial Examiner Kennedy: I didn't hear the answer. Read the answer, please, Mr. Reporter.

(The answer referred to was read by the Reporter, as set forth above.)

Q. (By Mr. Evans) What do you mean, you didn't know the outcome of what? A. I wasn't in town at the time.

*Alexander Kalastro—For National Labor Relations
Board—Cross.*

Q. Oh, you weren't in town at the time? A. No.

Q. Where were you? A. I was out in Huachuca Mountains.

Q. When did you first go back to work? A. Well, I was in Huachuca Mountains for the week-end.

Q. You worked Monday, didn't you? A. Yes, I did.

Q. That is the 10th; you worked Tuesday, the 11th?
A. Yes, sir.

Q. Are you employed at the present time? A. Yes, sir.

Q. By whom? A. Shattuck Denn.

Q. Shattuck Denn Mining Corporation? A. Yes, sir.

Q. And what is your job? A. Miner.

Q. What rate of pay do you receive? A. \$5.18.

Q. How long have you been employed at the Shattuck Denn? A. In February it will be a year.

Q. February, 1937? A. Yes.

Q. Last February? A. Last February I went to work.

Q. And what job did you have when you went to work for the Shattuck Denn? A. Trammer.

Q. What rate of pay did you receive? A. I don't remember exactly.

Q. Is that the same as miner's pay? A. No. It is the mucker's pay, the same as mucker's pay.

Q. You received mucker's pay? A. Yes, sir.

Q. At that time it was in excess of \$5 a day, was it not?
A. I presume.

Q. And you worked continuously in the Shattuck Denn since February of 1937, didn't you? A. Yes, except—I have been laid off now; it has been two weeks.

Q. You have been laid off for two weeks? A. Yes, a week at a time. We are taking turn-about, and now I went mining, I was caging, and I went mining, and when I was caging I was off for two weeks.

Q. When was that? A. Well, I just went to work this last week. The week before that I was off, and then worked two weeks, and I was off the previous week to that.

*Alexander Kalastro—For National Labor Relations
Board—Cross.*

Q. What was the highest rate of pay you received while working for the Shattuck Denn? A. \$6.24.

Q. Now, from June 12, 1935, until February of 1937, did you work for anyone? A. Odd jobs.

Q. What was the first job you held after June 12, 1935? A. I was on the relief.

Q. And how long were you working on relief jobs? A. About two months.

Q. How many days a month were you working? A. Six or seven. I am not positive.

Q. Then what did you do after the expiration of that two months? A. Washing dishes.

Q. Whereabouts? A. Palace Cafe.

Q. How long did you work there? A. I don't exactly remember. It was two or three months.

Q. And did you work every day? A. No.

Q. How often did you work during that two or three months? A. I worked during week-ends, Friday, Saturday and Sunday, holidays.

Q. How much did you make? A. A dollar a day.

Q. And approximately how many days a week did you average? A. Oh, three, four, sometimes five.

Q. You also received your meals, did you not? A. Yes, sir.

Q. Then what did you do after you left the Palace Cafe? A. Grocery clerk.

Q. Whereabouts? A. American Cash Grocery.

Q. In Bisbee? A. Yes, sir.

Q. And how long did you work there? A. I am not positive; about six or seven months.

Q. Did you work there until you went to work for the Shattuck Denn? A. Yes.

Q. And your employment with American Cash Grocery was continuous during that period? A. No.

Q. Well, did you work steadily during that six or seven months' period? A. Well, I worked—yes, steady.

*Alexander Kalastro—For National Labor Relations
Board—Cross.*

Q. How many days a week did you work? A. Oh, let's see. I worked—well, six days.

Q. What pay did you receive? A. \$2 a day.

Q. Those are the only jobs that you have held since—up to the time you went to work for the Shattuck Denn? A. Yes, sir.

Q. You were on the picket line? A. Once.

Q. Were you here during the entire time of the picketing? A. Yes, sir.

Q. That is, in the Bisbee district? A. In the Bisbee district.

Q. Now, approximately what time in August was it that you say you saw Bateman? A. The latter part of August.

Q. Do you know the date? A. Not exactly, no, sir.

Q. Would you know the day of the week? A. I believe it was Wednesday; I am not positive. Tuesday or Wednesday.

Q. Was it before or after the picket line terminated? A. After.

Q. What time of day did you see him? A. 9:00 or 10:00 o'clock.

Q. And that was at his office? A. Yes, sir.

Q. Was there anyone there? A. No, sir.

Q. Anyone outside of his office? A. There were some fellows walking around there. I didn't pay no attention. Just walked in.

Q. As a matter of fact, that was after rustling hours, was it not? A. Yes, sir.

Q. Where were you working just prior to the time you left the employ on June 12th? What shaft? A. Campbell shaft.

Q. Have you ever been back to see Mr. Bateman since August, 1935? A. No, sir.

Mr. Evans: That is all.

Mr. Persinger: Nothing further.

*Alexander Kalastro—For National Labor Relations
Board—Recross.*

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you consider that your present work is better than that which you had at Phelps Dodge when you left Phelps Dodge? A. No.

Q. You would rather go back to Phelps Dodge? A. Yes, sir.

Q. You are making more money now than you did there? A. Yes, sir.

Q. Would you be willing to go back to Phelps Dodge for what you were drawing at the time you left there? A. Yes, sir.

Trial Examiner Kennedy: That is all.

Mr. Evans: Just a moment, please.

Recross examination:

Q. (By Mr. Evans) Why would you rather go back to Phelps Dodge at less pay? A. I have been here all my life, and Phelps Dodge is a more substantial company. I can also go back to Shattuck Denn any time, but they might close down at any time.

Q. As a matter of fact, Shattuck Denn has been operating in this community for 20 or 30 years, has it not? A. Yes, it has, but you never can tell when they might lay you off.

Q. And, as a matter of fact, they have just opened up a new large ore body, have they not? A. Yes, sir.

Q. Are you married or single, Mr. Kalastro? A. Married.

Q. When were you married? A. I couldn't tell you the exact date.

Q. I mean, has it been recently? A. No, it has been in '34.

Q. In 1934? A. I believe, yes.

*Alexander Kalastro—For National Labor Relations
Board—Recross.*

Q. While you were working for the Phelps Dodge Corporation? A. Yes, sir; Phelps Dodge Corporation.

Mr. Evans: That is all.

Trial Examiner Kennedy: Another question: When you worked for Phelps Dodge you received certain medical service, did you? Do they have such an arrangement in case you are sick?

The Witness: Yes, sir.

Trial Examiner Kennedy: Of what did that consist?

The Witness: You would go to the hospital in case you hurt your finger or sprained your arm; go to the hospital and get treatment for it.

Trial Examiner Kennedy: Without charge to you?

The Witness: It was taken \$2—I believe that was the rate that we was paying; I am not positive—out of your pay check per month.

Trial Examiner Kennedy: Do you get that service at Shattuck Denn?

The Witness: They take it out, but I never did go up. The wife has been up to get service.

Trial Examiner Kennedy: You get the same service at Shattuck Denn as you did at Phelps Dodge?

The Witness: Yes, sir.


Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Bigelow.



**W. H. Bigelow—For National Labor Relations Board
—Direct.**

W. H. BIGELOW, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?
The Witness: W. H. Bigelow.

Direct examination:

Q. (By Mr. Persinger) Mr. Bigelow, were you formerly employed by the Phelps Dodge Corporation? **A.** Yes, sir.

Q. When were you first employed by the company? **A.** Oh, 1908.

Q. Did you work continuously after that? **A.** No, sir.

Q. Off and on? **A.** Off and on.

Q. What was your last lay-off? **A.** The last lay-off?

Q. When was the last time you were laid off? **A.** Oh, 1931, I believe, or '30.

Q. When did you go back to work after that? **A.** About March or April—the last of March or first of April in '34.

Q. And you worked how long that time? **A.** Oh, about a year; a little better than a year, I guess.

Q. When did you finally quit work? **A.** I come out on strike.

Q. At the time of the strike what job did you have? **A.** I was mining.

Q. Were you a member of the union at that time? **A.** Yes, sir.

Q. Were you on the picket line during the strike? **A.** I was.

Q. After the strike was over did you ever apply to the company for reinstatement? **A.** No, sir.

Q. Why not? **A.** Well, my brother did, and he said there was no use in rustling Mr. Bateman.

Q. Who is your brother? **A.** Clyde Bigelow.

*W. H. Bigelow—For National Labor Relations Board
—Cross.*

Q. And as a result of that you have not applied at any time? A. No, sir.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 34, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 34.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Bigelow, are you an employee of the Phelps Dodge Corporation at the present time? A. No, sir.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. June 10, 1935? No, sir.

Q. You were employed at what shaft at the time that you went out on June 10? A. Junction.

Q. You were working as a miner? A. Yes, sir.

Q. What was your rate of pay? A. \$5.00,

Q. \$5.00 a day? A. I believe so.

Q. How many days a week were you working at that time? A. I believe it was five days.

Q. Were you in the picket line all during the month of June, after June 10, 1935? A. No, not all the time.

Q. Were you in the picket line in the month of July? A. Well, I was on the picket-line there for two weeks steady, and then about once a week, or maybe every two weeks, whenever I happened to be in town.

*W. H. Bigelow—For National Labor Relations Board
—Cross.*

Q. Well, were you in the picket line off and on until August 21? A. Yes, sir.

Q. Were you in the picket line on the last day that there was any picketing? A. No, sir.

Q. Do you know what date that was? A. August 24, I believe.

Q. Well, do you know that August 24th was a Monday? A. No, I couldn't swear to that.

Q. After you walked out on June 10, 1935, Mr. Bigelow, what employment did you obtain after that? A. Oh, I worked on the relief a while.

Q. How long? A. About two months.

Q. That is, during the months of June and July? A. Well, quite a while after that.

Q. Into August? A. Well, I worked down here at Baker-ville, in Cochise Road.

Q. Is that in August? Did you work on relief after August, 1935? A. Well, I don't know for sure just what date it was, but I worked on that there project of paying Bakerville and Cochise Road.

Q. That was sometime in the summer of 1935? A. I believe it was; it was more towards the fall.

Q. Around September, '35? A. Yes, I think so; something like that.

Q. How many days work a month did you get during that period there from June until September? A. I believe it was—let me see. I put in two periods: 11 days at each period.

Q. After you quit relief work did you get a job anywhere? A. At the Shattuck Denn.

Q. When was that? A. That was in '36.

Q. What month in '36? A. December.

Q. December of 1936? A. Yes, sir.

*W. H. Bigelow—For National Labor Relations Board
—Cross.*

Q. What employment did you have during the period from September, 1935, until December, 1936? A. Well, I had a ranch; that's all.

Q. You had a ranch. Where was that? A. Down in the Valley.

Q. That is, your own ranch? A. Yes, sir.

Q. Are you living there at the present time? A. Yes, sir.

Q. How large a ranch is that? A. 320 acres.

Q. Do you derive any income from that ranch? A. Well, very little.

Q. Did you derive any income from it during that period of approximately one year, from September, 1935, to December, 1936? A. Well, I raised beans and tomatoes and a few cows.

Q. And you went to work, you say, in December of 1936? A. Yes, sir.

Q. Do you know what date that was? A. I think it was around the 17th or 18th of December.

Q. Of December? A. Yes, sir.

Q. What job did you start on with the Shattuck Denn Mining Company? A. Well, I was hired out as a timber man, but I worked 7 days as a mucker.

Q. What pay did you get for the first 7 days? What rate were you on,—timberman's rate? A. No, sir; mucker's rate.

Q. What was that at that time? A. Well, I can't remember that for sure.

Q. In excess of \$5.00? A. I think it was.

Q. A day? A. Something like that.

Q. And then after the 7 days were up, did you go on as a timberman? A. No, sir, as a miner.

Q. As a miner? A. Yes, sir.

Q. What rate did you start at at that time? A. I think it was better than \$5.00; I don't just—

*W. H. Bigelow—For National Labor Relations Board
—Cross.*

Q. Was it in excess of \$5.50? A. I don't know whether the rates has been changed; I don't remember.

Q. How many days a week were you working the first three or four weeks when you started in with the Shattuck Denn? A. 7 days a week.

Q. 7 days a week? A. Yes, sir.

Q. Have you worked continuously for the Shattuck Denn Mining Company since around December 17th or 18th, 1936? A. Yes, sir.

Q. What is your present job with the Shattuck Denn Mining Company? A. Mining.

Q. What is your rate of pay? A. \$5.48.

Q. \$5.48? A. Yes, sir.

Q. How many days a week? A. 6, now.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What pay rate were you receiving at Phelps Dodge when you left? A. It seems to me like it was \$4.95.

Q. You were employed as a miner? A. Yes, sir.

Q. How long have you been classified as a miner at Shattuck Denn? A. Well, after the first day, or, after the first 7 days.

Q. Since the second week in December of 1936? A. I believe so.

Q. Which job do you consider preferable, the one in which you are now working, or the one you had with Phelps Dodge? A. Well, there ain't much difference.

Trial Examiner Kennedy: That is all. Anything further?

*William Windsor—For National Labor Relations Board
—Direct.*

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

Mr. Persinger: Mr. William Windsor.

WILLIAM WINDSOR, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your full name, please?

The Witness: William Windsor.

Direct examination:

Q. (By Mr. Persinger) Mr. Windsor, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed? A. I first went to work in the district in 1925.

Q. And how long did you work that time? A. Three months; the summer of '25.

Q. Were you going to school then? A. Yes, sir.

Q. And after you finished school, when did you first go to work for the corporation? A. I went back to work in the mine in the Spring of '26.

Q. And you worked how long that time? A. Up until November of 1931.

Q. There was a general layoff then? A. Yes, sir.

Q. When did you go back to work after that? A. September, 1933.

Q. What job did you go back at in September, 1933? A. I hired out as a miner, but in a week I went on as helper, on a motor.

Q. And you worked how long that time? A. Up until the strike.

*William Windsor—For National Labor Relations Board
—Direct.*

Q. On the same job? A. No. I went back on the mining job for about a year before the strike was called.

Q. And in June of 1935, what job did you have? A. Mining.

Q. Were you a member of the Union at the time the strike was called? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line? A. About the middle of July.

Q. And between June 10th and the middle of July, were you on the picket line frequently? A. Yes, sir.

Q. After the strike was called off, did you apply for reinstatement with the company? A. I beg your pardon?

Q. After the strike was called off, did you apply for work at the company? A. Yes, sir.

Q. When? A. About the middle of September.

Q. Is that the same year? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. At his office, employment agent.

Q. What time of the day was it? A. It was about 10:00 o'clock in the morning.

Q. Do you remember the day of the week? A. No, I don't.

Q. Anyone else present? A. No, sir.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance to go to work; that is all I asked him.

Q. And what did he say? A. He says, "I have taken up a few cases like yours, but they don't know what they want to do about it."

Q. Anything further said at that time? A. No, sir.

Q. Have you been back since? A. I went back another time.

Q. When? A. About two weeks afterwards.

*William Windsor—For National Labor Relations Board
—Cross.*

Q. And did you see Mr. Bateman that time? A. Yes, sir.

Q. Where did you see him? A. At his office.

Q. Was anyone else present? A. No.

Q. What time of day was that? A. It was about 10:00 o'clock in the morning.

Q. And what did you ask Mr. Bateman? A. I asked him what was the chance to get my job back.

Q. What did Mr. Bateman say? A. He told me the same thing as before.

Q. Namely, that there had been no disposition made of the cases yet? A. Yes, sir.

Q. Have you applied for work since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 35, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 35.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Mr. Windsor, what did you do after July, 1935? A. I worked out here on a road job.

Q. When did you go to work on that road job? A. About the 16th of July.

Q. 1935? A. Yes, sir.

Q. What was the nature of the work you did out there? A. Oh, just common laborer.

Q. How long did you work there on that job? A. Well, about a year or 14 months.

Q. And who employed you? A. Pleasant-Hasler.

*William Windsor—For National Labor Relations Board
—Cross.*

Q. And you worked on that job continuously for some time—something between a year and 14 months, is that right? A. Yes, sir.

Q. What rate of pay did you receive? A. I started out at 50 cents an hour. Then I was raised to 62½ cents an hour.

Q. How long did you work for 50 cents an hour? A. About 5 months.

Q. The balance of the time you worked for 62½ cents an hour? A. Yes, sir.

Q. That is 8 hours a day? A. Yes, sir—Well, some jobs it is 6 hours a day, and some jobs it is 7 hours a day.

Q. However, you worked 40 hours a week? A. 40 hours a week.

Q. When did you leave the employ of Pleasant-Hasler? A. It was about the 1st of September, in '36.

Q. The first of September, in '36? A. About.

Q. Now, during the time you were working for Pleasant-Hasler, weren't you working, as a general rule, 7 days a week? A. No.

Q. Did you ever work more than 40 hours a week? A. Oh, once in a while, once or twice; once in a while.

Q. Your usual weekly period was one of 40 hours, then? A. Yes, sir.

Q. Now, what did you do after you left their employment? A. I came back to town and I worked 11 days on the relief. Then I was rustling at the Denn and got on there.

Q. When did you go to work for the Shattuck Denn? A. The 2nd day of December, '36—'37—'36.

Q. And you have worked at the Shattuck Denn continuously since that time? A. Yes, sir.

Q. What work did you do when you first went with the Shattuck Denn? A. I was rated as a mucker.

Q. And how long were you on mucker's work? A. About 2 months.

*William Windsor—For National Labor Relations Board
—Cross.*

Q. And then what job did you have? A. I took a slusherman, stope; miner's pay.

Q. You are employed at miner's pay at the present time? A. Yes, sir.

Q. And what rate of pay are you receiving at the present time? A. \$5.48.

Trial Examiner Kennedy: How much? I didn't hear that.

The Witness: \$5.48.

Q. (By Mr. Evans) You are working a 6-day week? A. Yes, sir.

Q. What was the highest rate of pay that you received while you were employed by Shattuck Denn? A. \$6.44.

Q. And you were receiving \$5.00 per day, as I understand it, when you left the employ of the Phelps Dodge Corporation? A. Yes, sir.

Q. And at that time you were working a 5-day week? A. Yes, sir.

Q. Where were you employed prior to June 10, 1935? A. At the Campbell.

Q. At the Campbell? A. Yes, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Which job do you consider preferable,—the one you had at Phelps Dodge, or the one you now have? A. The one at Phelps Dodge.

Q. Why? A. Because when I go back to work there they will have lifted the blackball from against me, where other-

*Ellis Meran Scales—For National Labor Relations Board
—Direct.*

wise if I got froze out at the Denn I would be through in this district as far as mining employment is concerned.

Trial Examiner Kennedy: Anything further?
You will be excused.
(Witness excused.)

ELLIS MERAN SCALES, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Ellis Meran Scales.

Direct examination:

Q. (By Mr. Persinger) Mr. Scales, were you employed formerly by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. In February, '26.

Q. And at that time you worked how long? A. Until June, '36.

Q. Until when? A. June, '36.

Q. '36? A. '35.

Q. You were not laid off during the general layoff in '31 and '32? A. No, sir.

Q. You worked continuously up to the time of the strike? A. Yes, sir.

Q. What job did you have when you started? A. Mucking.

Q. And what job did you have in June, '35? A. Motor-man.

Q. What was that rate of pay? A. \$5.24.

*Ellis Meran Scales—For National Labor Relations Board
—Direct.*

Q. Were you a member of the Union at the time the strike was called? A. Yes, sir.

Q. You went out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line? A. The 24th of August.

Q. Was that the last day of the strike? A. Yes, sir.

Q. Between June 10th and August 24th, were you frequently on the picket line? A. Yes, sir.

Q. After the strike was called off, did you ever apply for work? A. Yes.

Q. When? A. Oh, between the 24th and 28th of August.

Q. Within a few days of the strike? A. After the strike.

Q. To whom did you apply? A. Bateman.

Q. Where did you see him? A. In his office.

Q. What time of day was that? A. 9:00 o'clock.

Q. In the morning? A. 9:00 o'clock in the morning; yes, sir.

Q. Was anyone else present? A. No, sir.

Q. What did you ask him? A. I asked him how about the job.

Q. What did he say? A. He says, "Well, I don't know." He said he had other boys in the same shoes that I was in, and he couldn't do anything for us.

Q. Was anything further said? A. No, sir.

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 36, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence as Board's Exhibit 36.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 36.)

Mr. Persinger: The witness is with you.

*Ellis Meran Scales—For National Labor Relations Board
—Cross.*

Cross examination:

Q. (By Mr. Kitchel) Mr. Scales, what day did you say was the last day you were in the picket line? A. The 24th of August.

Q. Was that the day that the picket line was disbanded, or was there picketing on that day? A. I picketed that morning.

Q. Do you remember what day of the week that was? A. No, sir.

Q. You say that you were in the picket line practically every day? A. Yes, sir.

Q. Were you on relief during that period? A. Yes.

Q. How many days a month did you get during the period you were on relief? A. Well, it varied; 5 sometimes, and up to 11.

Q. How long did you stay on the relief? A. I was on relief about a year and a half; a year and two months.

Q. During that period of a year and about two months, did you have any other employment? A. Three months, for a leaser.

Q. When was that, Mr. Scales? A. Well, it was eight months after the strike; I couldn't say when it was.

Q. 8 months after the strike? A. Yes.

Q. That is, 8 months from June 10, 1935? A. Yes, sir.

Q. That would be in February of 1936? A. Yes, sir.

Q. For whom did you go to work at that time? A. McKenna.

Q. Jim McKenna? A. Yes, sir.

Q. What was your job with Mr. McKenna? A. Trammer.

Q. How much were you paid? A. \$4.48, I believe.

Q. \$4.48 a day. How many days a week? A. Six.

Q. Six days a week. And you worked continuously for Mr. McKenna from sometime in February, 1936, for a

*Ellis Meran Scales—For National Labor Relations Board
—Cross.*

period of three weeks, did you say? A. Two months and a half.

Q. Two months and a half? A. Yes, sir.

Q. Were you laid off at the end of that time? A. Yes, sir.

Q. That would be sometime around the 1st of May, 1936; at the end of April, or the first part of May? A. Yes, sir.

Q. What was your next job, Mr. Scales? A. I went working on a contractor, Pleasant & Hasler,—W. P. A.

Q. When did you start that? Was that right after you left Mr. McKenna's lease? A. I couldn't say whether it was right after or not.

Q. Well, how soon after do you estimate it was? A. Oh, a few weeks.

Q. What job did you have with Pleasant & Hasler Construction Company? A. Common laborer.

Q. What pay did you get? A. Fifty cents an hour.

Q. How many hours a day? A. Eight hours a day.

Q. How many days a week? A. Five.

Q. How long did you work on that job? A. Four months.

Q. That would take you, then, up until August of 1936? A. A little later, I believe.

Q. What was your next job? A. Another contractor out at Cochise; the same rate of pay.

Q. Same rate of pay? A. Yes.

Q. Were you working for the Pleasant & Hasler Construction Company? A. No; another company. I can't think of the name of it.

Q. How long did you work for them? A. A couple of weeks.

Q. Then what was your next job? A. I came back to Bisbee and rustled at Denn.

Q. Did you get a job? A. Yes, sir.

Q. When was that? A. The 28th day of October.

Q. 1936? A. '36; yes, sir.

*Ellis Meran Scales—For National Labor Relations Board
—Cross.*

Q. Isn't it true, Mr. Scales, that from the time you went to work for Mr. McKenna in February of 1936, with the exception of perhaps one or two weeks intervals, between these jobs that you have stated, until October 28, 1936, you were continuously employed? That is, you had employment almost that entire period? A. Well, there was the W. P. A.

Q. Well, that wasn't relief work you were doing? A. Yes, sir.

Q. When you were working for Pleasant & Hasler Construction Company? A. Yes, sir.

Q. But it was regular employment? In other words, it was six days a week? A. Five days a week.

Q. Five days a week? A. Yes.

Q. What job did you start on with the Shattuck Mining Company in October of 1936? A. Mucking.

Q. Do you remember what your rate of pay was at that time? A. \$4.84.

Q. How many days a week were you working? A. Six one week and seven the next week.

Q. That is, they alternated? A. Yes.

Q. Are you employed at the present time at the Shattuck Denn Mining Company? A. Yes, sir.

Q. Have you been employed steadily by them since October 28, 1936? A. Yes, sir.

Q. What is your present job with the Shattuck Denn Mining Company? A. Finley operator.

Q. What is your rate of pay? A. \$5.76.

Q. How many days a week are you working? A. Six.

Q. Have you ever been an employee of the Phelps-Dodge Corporation since June 10, 1935? A. No, sir.

Q. What shaft were you working in at the time you walked out on June 10, 1935? A. Campbell.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

*Ellis Meran Scales—For National Labor Relations Board
—Cross.*

Examination by the Trial Examiner:

Q. (By Mr. Trial Examiner Kennedy) You are now getting \$5.76? A. Yes, sir.

Q. When you left Phelps Dodge what did you get? A. \$5.24.

Q. Which is the better job? A. Well, the Phelps Dodge is the better job.

Q. Why? A. Well, it's just more of a convenient place to work, more steadier, a bigger company.

Q. Have you been employed steadily since you went to work for Shattuck Denn? A. Yes, sir.

Q. In the last year you have not had any less steady employment than you had with Phelps Dodge, have you? A. No, sir.

Q. How long have you know about this Shattuck Denn Company? A. Well, since '25.

Q. Is that the first time you came into this district? A. Yes, sir.

Q. Was it operating at that time? A. Yes, sir.

Q. What type of mineral do they mine there? A. Copper, silver and gold.

Q. Much the same thing they mine at Phelps Dodge? A. Copper, silver and gold.

Q. Is there any difference, as far as you can observe, in the safety standards of the two companies? A. Well, no, sir.

Trial Examiner Kennedy: That is all.
Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: No more.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

Mr. Persinger: Mr. Erkkila.

*Frank Erkkila—For National Labor Relations Board
—Direct.*

FRANK ERKKILA, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: F. H. Erkkila.

Direct examination:

Q. (By Mr. Persinger) Mr. Erkkila, were you formerly employed by the Phelps Dodge Corporation? A. Am I formerly?

Q. Were you formerly employed? A. Yes, sir.

Q. When did you first go to work for them? A. Around about June 1, '34.

Q. And you worked how long? A. About a year, until June.

Q. What job did you start in at? A. Mucking.

Q. What job did you have in June, '35? A. Mining.

Q. In June, '35, were you a member of the union? A. Yes, sir.

Q. Did you go out on strike with the union? A. Yes, sir.

Q. Were you on the picket line during the strike? A. Yes, sir; every chance I had.

Q. What was the last day you were on the picket line? A. During the last week of the strike.

Q. After the strike was over did you apply to the company for reinstatement? A. Yes, sir.

Q. When? A. On or about November 1st.

Q. Had you rustled before that? A. Well, outside on the ground. I never spoke to them.

Q. In other words, you had waited outside the employment office? A. Yes, I waited outside.

Q. But you had not spoken to Mr. Bateman? A. No.

Q. Until some time in November? A. Yes, sir.

*Frank Erkkila—For National Labor Relations Board
—Cross.*

Q. And where did you speak to Mr. Bateman in November? A. In his office.

Q. What time of day was that? A. Well, about the forenoon.

Q. Was anybody else present? A. Not that I noticed.

Q. What did you ask him? A. I asked him if there was any chance for a job.

Q. What did he say? A. He said, "Well, you were on the picket line, weren't you?"

I said, "A few times."

Then I told him I needed a job pretty badly; there was nobody in the family that was working, and asked him if he knew of any place where I could get a job.

He mentioned Miami Copper Company, and said there might be a chance over there.

Well, I thanked him and walked out.

Q. Have you been back since? A. I haven't been back since, no.

Mr. Persinger: I offer as Board's Exhibit No. 37 in evidence the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 37.)

Mr. Persinger: Your witness.

Cross examination:

Q. (By Mr. Evans) You have not been an employee of the Phelps Dodge Corporation since June 10, 1935, have you, Mr. Erkkila? A. No, I haven't.

*Frank Erkkila—For National Labor Relations Board
—Cross.*

Q. What did you do after August 24, 1935, in the way of working any place? A. No, I never worked; only stayed on the folk's ranch.

Q. You stayed on your family's ranch? A. Yes, sir.

Q. And you worked on the ranch, did you? A. Yep.

Q. What type of work did you do on the ranch? A. Well, a little farming and ranching.

Q. That is work that you had done from time to time in the past when you were not working in the mines, was it not? A. Yes, that's the way I was raised.

Q. That is the work you were raised on? A. Yes.

Q. When did you first get a job after that? A. It was some time the last of February for the Shattuck Denn in '36.

Q. The last of February, 1936? A. Yeh.

Q. As a matter of fact, didn't you go to work for the Shattuck Denn in January of 1936? A. Not that I can recall.

Q. It might have been January of 1936? A. It might have.

Q. What kind of job did you have when you first went to work for the Shattuck Denn? A. I was mucking.

Q. And are you still employed by the Shattuck Denn? A. Yes, sir.

Q. What type of job do you have at the present time? A. Mining.

Q. What rate of pay are you receiving? A. \$5.48.

Q. And you have been continuously employed since January of February of 1936? A. Yes, sir.

Q. But the Shattuck Denn? A. Yes, sir.

Q. What job did you have prior to June 10, 1935, with Phelps Dodge Corporation? A. You mean what job was I on June 10th?

Q. Yes. A. Mining.

Q. Were you mining? A. Yes.

*Frank Erkkila—For National Labor Relations Board
—Cross.*

Q. Did you receive mining pay? A. Yes, sir.

Q. You were not mucking? A. No.

Q. And where were you working, what shaft? A. Campbell shaft.

Q. At the Campbell shaft? A. Yes, sir.

Q. Now, then, between June 10, 1935, and either January of February of 1936, as I understand your testimony, you had no job with anyone? A. No, I didn't.

Q. Did you work on relief at all? A. No.

Q. You were not engaged in any relief work at all during that period? A. No.

Q. You were working—your work was confined to work that you did on your family's ranch? A. Yes.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Which job do you prefer? The one you now have, or the one you had at Phelps Dodge when you left Phelps Dodge? A. Well, I would prefer Phelps Dodge on account of being more dependable, because I was born and raised—no, not born—I was raised here, not born here.

Q. More what? A. More dependable job.

Q. You got \$5 a day at Phelps Dedge, is that right, when you left? A. Yes, I got \$5 when I left.

Q. And you are getting more than that now? A. Yes.

Q. Do you want to go back at \$5 a day? A. Well, that would be more dependable, I suppose, if I would go back.

Q. You would rather go back at \$5 a day than stay where you are at \$5.48? A. Yes.

Q. Has your work at Shattuck Denn been steady since you have gone there? A. Yes, I have been there quite steady.

*Frank Erkkila—For National Labor Relations Board
—Recross.*

Q. How many men do they have employed at Shattuck Denn? That is, all told? A. Well, I couldn't say that for sure, but on our shift there is around 60 or 70.

Q. Sixty or 70? A. Yes, sir.

Q. What do they run, three shifts? A. Two shifts.

Q. Two shifts? A. Yes.

Q. Does that make the total employees in the mine around 150, not more than that? Is that what I am to understand?

A. Well, about 150, I suppose.

Trial Examiner Kennedy: That is all. Anything further?

Recross examination:

Q. (By Mr. Evans) Mr. Erkkila, you have discussed your testimony in this case with others, have you? A. Well, you mean the case on this—

Q. You have talked over with others what your testimony was going to be in this case? A. Well, I have talked—I thought they was coming up against our case.

Q. As a matter of fact, haven't you discussed with other members of the union out here in the hallway your testimony, what it would be in this case? A. Yes, I believe I have.

Q. And they told you that one of the questions that the Trial Examiner would ask you would be whether you preferred to work for the P. D. or the Shattuck Denn, didn't they? A. Yes, sir.

Q. And it was suggested to you that you should, in reply to that, state that you preferred to work for the P. D.? A. Well, not only suggested, but I would prefer that because that would be a more dependable job.

Q. And it was also suggested to you that it would be a more dependable job, was it not? A. No, sir, it wasn't.

Q. You thought of that all by yourself, did you? A. I thought of that before the case came on trial.

**Luke Sertich—For National Labor Relations Board
—Direct.**

Q. As a matter of fact, Mr. Erkkila, the Shattuck Denn has been operating here for a good many years, has it not?

A. Yes, sir.

Q. And they are operating at the present time, are they not? A. Yes, sir.

Q. They have just opened up a new large ore body, have they not? A. Yes, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

LUKE SERTICH, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Luke Sertich.

Direct examination:

Q. (By Mr. Persinger) Mr. Sertich, were you formerly employed by the Phelps Dodge Corporation? A. Yes, I have.

Q. When were you first employed by them? A. In the Spring of 1924.

Q. And you were there how long? A. Until August 15, 1930.

Trial Examiner Kennedy: I didn't get those dates. What was the first date?

The Reporter: 1924.

Trial Examiner Kennedy: And the second date?

The Witness: 1930.

*Luke Sertich—For National Labor Relations Board
—Direct.*

Q. (By Mr. Persinger) And at that time there was a general lay-off, was there? A. Yes, there was.

Q. When did you go back to work after that? A. The first part of September, 1933.

Q. And you worked how long that time? A. Until the strike.

Q. What was your job when you started in '24? A. A miner.

Q. And what was your job when you went back to work in '33? A. Miner.

Q. What was your job in June, '35? A. I was a track man.

Q. A what? A. Working on the track on a pipe. I was promoted to a track man. I worked on pipes on the ditches.

Q. What rate of pay did you receive as a track man? A. I believe it was \$5.24 at that time.

Q. And the time of the strike were you a member of the union? A. I was.

Q. Did you go out on strike? A. Yes, sir.

Q. Did you go on the picket line? A. Yes, sir.

Q. What was the last day that you were on the picket line? A. Just about a week before the strike was called off.

Q. And when the strike was called off, did you apply for reinstatement at any time? A. I did later.

Q. When? A. In about the first part of July, 1936.

Q. Well, now, why were you waiting so long? A. Because I went to the C. C. Camp.

Q. And in July, '36, to whom did you apply? A. To Mr. Bateman.

Q. Where did you see him? A. In his office.

Q. What time of day was that? A. Between 9:00 and 10:00 o'clock in the morning.

Q. Was anyone else present? A. There was two more C. C. boys from the camp with me, and there was a man sitting at the desk at the time filling out an application for the work.

Luke Sertich—For National Labor Relations Board—Cross.

Q. And what did you say to Mr. Bateman? A. I said to Mr. Bateman, "Is there any chance for me to get a job back?"

And he shook his head and says, "No chance; nothing doing."

Q. Anything further said? A. Not that day. I walked out.

Q. Have you been back since? A. No.

Mr. Persinger: I offer as Board's Exhibit 38 the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 38.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Sertich, have you been employed by the Phelps Dodge Corporation at any time since June 10, 1935? A. No, not by Phelps Dodge Corporation.

Q. And you are not employed at Phelps Dodge Corporation at the present time, are you? A. I am not.

Q. You stated that you were in the picket line until about one week before the picket line was called off? A. I was.

Q. What date was the picket line called off? A. Well, I ain't certain. I think it is about August 24th.

Q. And you say that you were not in the picket line after the 17th of August? A. I don't think I was.

Q. Did you leave the district at that time? A. No, I didn't feel good.

Q. Did you work on relief during the period from June 10, 1935, to August 17th? A. I have.

Luke Sertich—For National Labor Relations Board—Cross.

Q. 1935? A. I have.

Q. What did you do after you quit the picket line, as you say? A. I went to apply to the C. C. Camp for C. C. work.

Q. And did you go to a C. C. C. Camp? A. I did.

Q. When did you go? A. I went there August 28th.

Q. August 28, 1935? A. 1935.

Q. And you stayed there until July? A. No, I stayed there until September, the 5th or 4th, 1936.

Q. You were there the full time? A. I was there right along.

Q. Where was the camp? A. I was first at Sunnyside in Huachuca, Arizona.

Q. How long were you there? A. About two weeks.

Q. Then where did you go? A. To Naco.

Q. Well, then, from August 28, 1935, until September of 1936, just about a year? A. A year and a week.

Q. A year and a week? A. Yes.

Q. That you were in the C. C. C. Camp. And you were there the whole time? A. I was.

Q. And it was during the time while you were in the C. C. C. Camp that you had this talk with Mr. Bateman? A. Yes, sir.

Q. What did you do when you left the C. C. C. Camp in September of 1936? A. Before I left the C. C. C. Camp in September, '36, I asked the Captain, the Commanding Officer, for permission to go out somewhere and look for a job, which I did at the same time when I was asking the Captain to give me permission to go and see Mr. Bateman, because we couldn't go out of camp without permission, on any kind of personal business, and right after I seen Mr. Bateman I asked the Captain to give me permission to go to see the employment agent at the Shattuck Denn mine, which he did. And I registered for a job and was notified by letter, because we couldn't accept—we couldn't get no discharge out of a camp without a letter of a job, but we already

Luke Sertich—For National Labor Relations Board—Cross-

had the job, and Mr. Flynn sent me a letter the first part of September.

Q. Who was Mr. Flynn? A. Mr. Flynn is General Manager of the Shattuck Denn.

Q. And when did you commence work for the Shattuck Denn? A. Around about the 5th of September.

Q. 1936? A. 1936.

Q. Now, have you been employed by them continuously since that time? A. Yes, sir.

Q. What job did you start on at the Shattuck Denn? A. Around about the 5th of September.

Q. 1936? A. 1936.

Q. Now, have you been employed by them continuously by them since that time? A. Yes, sir.

Q. What job did you start on at the Shattuck Denn? A. Miner.

Q. And what pay did you receive? Do you remember? A. Well, the pay was \$4.95.

Q. \$4.95? A. \$4.95, at that time.

Q. What is the highest rate of pay you have gotten with the Shattuck Denn since you have been with them? A. \$6.52.

Q. And what was the rate of pay that you were getting when you left the employ of the Phelps Dodge Corporation? A. \$5.24.

Q. \$5.24? A. Yes.

Q. And how many days a week were you working for the Phelps Dodge around the time that you left them? A. 6 days a week.

Q. 6 days a week for the Phelps Dodge? A. Yes, for the Phelps Dodge, at the time of the strike.

Q. Wasn't the Phelps Dodge on a 5-day basis then? A. No, not that I know of. I was working on the graveyard shift.

Q. 6 days a week? A. Yes, sir.

Q. You are certain of that? A. I believe I was.

Luke Sertich—For National Labor Relations Board—Cross.

Q. Are you employed at the present time by the Shattuck Denn Mining Company? A. I am.

Q. As a miner? A. As a timberman.

Q. As a timberman? A. Yes, sir.

Q. What is your present rate of pay? A. \$5.76.

Q. With reference to that talk you had with Mr. Bateman in the early part of July, 1936,—was that the only conversation you had with him? A. That is the only time I had ever talked to Mr. Bateman about anything, because I wasn't in town.

Q. What shaft were you working in when you quit the Phelps Dodge? A. At the Junction.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did your pay at the Shattuck Denn reach \$5.24 a day, or pass that much? A. Well, about that much. It was the first day we got it, I believe, was around January, 1937; I am not sure.

Q. Around January, '37? A. '37, when the first raise took effect.

Q. And what was that raise? A. Oh, at first my raise was 25 cents, or 26 cents; it was 5 per cent.

Q. What did it equal a day? How much were you getting after that raise? A. \$5.24, I believe.

Q. You got up to \$5.24 at Shattuck Denn in January, 1937? A. January, 1937, I believe.

Q. And since January, 1937, you have made \$5.24 or more? A. Or more. We got up as high as \$6.52.

Q. As high as \$6.52, and now it has gone down? A. Gone down again.

Q. To what? A. It has dropped down to \$5.50 for miners, and \$5.76 for timbermen, and I don't remember what the muckers get.

Luke Sertich—For National Labor Relations Board—Cross.

Q. Now, \$5.24 in January, '37. When did it go up again?
A. It went up gradually, almost every month.

Q. Every month you got a raise? A. Almost every month, until last August, I believe—no, last July sometime, when the first raise came again, I mean, the first drop.

Q. The first drop. What was it at the peak, then? A. \$6.52.

Q. \$6.52. And that was at what time,—in March? A. No, in July, last July.

Q. In July, '37? A. Yes, sir.

Q. And then it started going down? A. Started going down gradually, dropped. Two or three cuts already.

Q. And where is it now, as far as you are concerned? A. \$5.50 for miners.

Q. And what are you drawing? A. \$5.76.

Q. Now, how are these raises and drops worked at Shattuck Denn? A. They work according to whenever Phelps Dodge post a notice that a raise is in effect. We get the raise at the Denn and every time the Phelps Dodge make a cut we get cut also.

Q. Is that due to any union contract that your union has? A. No, we have no union contract at the Denn.

Q. You have no union contract, just follow the pay scale of Phelps Dodge? A. Of Phelps Dodge.

Q. Now, which job would you rather have: The \$5.76 you are now getting, or the job you had at Phelps Dodge when you left Phelps Dodge? A. I would rather have a job with Phelps Dodge.

Q. Why? A. For the reason the Phelps Dodge is a large corporation and their mines are more of a steady work, while the Denn is a little corporation and it will probably go flooeey any time.

Q. How long has the Denn been running? A. Well, they have been running for a year and a half now.

Q. How long has the corporation been in existence? A. Oh, it has been quite a while; I don't know.

Luke Sertich—For National Labor Relations Board—Cross.

Q. How long do you think it has been? A. I don't know; it has been here ever since I have been here.

Q. How long has that been? A. 15 years.

Q. It has been a corporation in existence here for 15 years, is that right? A. Yes, sir.

Q. And has it been operating steadily all that time? A. No, it has not.

Q. You know that it has been operated steadily for the last year and a half? A. For the last year and a half, yes.

Q. Has the Phelps Dodge been operating steadily all during that time? A. Yes, sir.

Q. All that time? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Kitchel: May I ask you one question, Mr. Sertich?

The Witness: Yes, sir.

Further cross examination:

Q. (By Mr. Kitchel) Has the Phelps Dodge operations during that period remained the same; that is, the payroll remained the same? A. No, it didn't. There was also slack times at Phelps Dodge, but there was no shutdown.

Q. During the period of the so-called depression, was there much of a payroll? A. Well, I don't know about during the depression. I stayed out of here almost three years—not quite three years.

Q. Were you let out at that time? A. I wasn't here—I went to California.

Q. When you left—— A. I left August 15, 1930.

Q. When you left, were you laid off at that time? A. No, I quit.

Q. At that time, were they not laying off a great many men? A. They was just getting 5 days a week then, when I quit. The time was getting slack.

Luke Sertich—For National Labor Relations Board—Cross.

Q. Were there many men being laid off? A. There was.

Q. Wasn't it at that same period of time that the Shattuck Denn was shut down? A. I don't remember, because I left the camp then.

Q. Well, you said it had been shut down? A. The Shattuck Denn has been shut down.

Q. When? A. It just opened up here, just about when the strike was called; just then they opened up, and the first men that was ever hired was the strikers, into the Denn, that I remembered.

Q. Was the Shattuck Denn operating when you left here in 1930? A. It was.

Q. To your knowledge was it operating for a good many years continuously prior to that time? A. Possibly they were prior to my time.

Q. Do you know? A. I know they were.

Q. That is all. A. But they was just up and down; there was only some few men working most of the time.

Q. They laid off, and then they increased their force? A. They laid off, and then increased their force.

Q. Did the Phelps Dodge ever do that? A. The Phelps Dodge did also.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Trial Examiner Kennedy: We will be in recess until 1:30.

(Thereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m. of the same date.)

Merrell Ernest Johnson—For National Labor Relations Board—Direct.

AFTER RECESS.

(The hearing was resumed, pursuant to the taking of recess, at 1:30 o'clock p. m.)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Johnson.

MERRELL ERNEST JOHNSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?
The Witness: Merrell Ernest Johnson.

Direct examination:

Q. (By Mr. Persinger) Mr. Johnson, were you formerly employed by Phelps Dodge Corporation? **A.** Yes.

Q. When were you first employed? **A.** Well, I was first employed by the C. & A. Company in '27 or '28.

Q. And you worked for the C. & A. how long? **A.** Up until the merger.

Q. And then after the merger did you work for Phelps Dodge? **A.** Yes, sir.

Q. When did you first work for them? **A.** In 1934.

Q. What was your job in 1934? **A.** Well, I started out as a tool nipper, and then I asked to get off tool nipper; then from tool nipper I went to traveling behind the mucking machine. From behind the mucking machine I went to swamping on the motor. From there I went over to the Cole shaft as toplander helper.

Q. What was your rate of pay at the Cole shaft? **A.** Mucker's wages.

Q. How long did you work? Up to what time? **A.** Up to the strike.

Merrell Ernest Johnson—For National Labor Relations Board—Direct.

Q. At the time of the strike were you a member of the union? A. No, not exactly.

Q. Did you go out on strike with the union? A. Yes, sir.

Q. Were you on the picket line? A. Three or four times.

Q. After the strike was over did you apply for reinstatement? A. Yes, sir.

Q. About when? A. A week after.

Q. To whom did you apply? A. To the employment office.

Q. To whom? A. Mr. Bateman.

Q. What time of day was that? A. Well, I went up in the morning first and he told me to come back, that anyone who hadn't registered to come back in the afternoon.

Q. When you went up in the morning was anyone else there? A. Yes, sir.

Q. How many? A. There was a whole crowd standing out in front of the employment office.

Q. And this was outside the office? A. What is that?

Q. This was outside the employment office? A. This was outside the employment office.

Q. Where was Mr. Bateman? A. He was up on those little steps, or whatever it is—that platform.

Q. Did you speak to Mr. Bateman? A. Not then, no.

Q. What did Mr. Bateman say? A. I never spoke to him then.

Q. Did he say anything? A. No.

Q. And when did you come back? A. I came back about 1:00 o'clock.

Q. Did you see Mr. Bateman then? A. Yes, sir.

Q. Where did you see him? A. In his office.

Q. And what did you say to him then? A. I said, "Mr. Bateman, is there any use in me reinstating?"

Q. And what did he say? A. He said, "No, there is not even any use of you looking for a job."

Merrell Ernest Johnson—For National Labor Relations Board—Cross.

Q. Was there anything further said at that time? A. And he said, "You know the reason why."

Q. Anything else? A. That is all.

Q. Have you applied for work since that time? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit 39, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 39.)

Mr. Persinger: The witness is with you.

Cross examination:

Q. (By Mr. Kitchel) How much were you getting when you were working for the Phelps Dodge Corporation just prior to June 10, 1935, Mr. Johnson? A. I was getting mucker's wages.

Q. What was the rate at that time? A. \$4.40.

Q. \$4.40? A. Yes, sir.

Q. Have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No.

Q. Are you an employee of the Phelps Dodge Corporation at the present time? A. No.

Q. Are you employed at the present time? A. Yes, sir.

Q. Who by? A. Shattuck & Denn.

Trial Examiner Kennedy: Just a minute. I have heard several of these witnesses refer to this as Shattuck & Denn. Is that the correct name?

Mr. Kitchel: No; Shattuck-Denn.

Trial Examiner Kennedy: Shattuck-Denn Mining Company?

Mr. Kitchel: Yes.

Merrell Ernest Johnson—For National Labor Relations Board—Cross.

Q. (By Mr. Kitchel) What day was this you had this talk with Mr. Bateman? A. Well, it was a week after the strike; I couldn't say what day it was.

Q. Well, when did the strike end? A. August 24th.

Q. Do you know what day of the week that was? A. No.

Q. Were you in the picket line the last day the picketing was done? A. No, sir.

Q. You started to say, on direct examination, that you went in the morning? A. I did.

Q. And that Mr. Bateman said to come back later on? A. He did.

Q. I thought you said he said nothing from the platform there? A. Well, he didn't say nothing to me.

Q. What did he say to the crowd? A. He said, "Any of those who haven't registered, come back at 1:00 o'clock."

Q. Then you did go back that afternoon? A. I did.

Q. You would figure, then, that that was about the first of September? A. Somewhere around there; yes.

Q. Were you on relief during the time that the picket line was established? A. No.

Q. Did you do any work during that time? A. No.

Q. What was the first employment that you obtained after June 10, 1935? A. There was two days—two or three days—before I was employed on the Shattuck Denn, and I worked on the C. W. A.

Q. The Shattuck Denn, then, was the first employment you had other than relief? A. Yes.

Q. During that period? A. Yes.

Q. Did you only work two days on relief? A. Two or three days; yes.

Q. How did you support yourself in the meantime? A. I was living with my dad and mother.

Q. You were born and raised in Bisbee, were you not? A. I was.

*Merrell Ernest Johnson—For National Labor Relations
Board—Cross.*

Q. Has the Shattuck Denn Mining Company been working in the community the time you have been here? A. Well, they have been working off and on; yes.

Q. What do you mean by "off and on"? What do you mean by "off"? A. They have been shut down for several years here.

Q. What years? A. I don't know what years.

Q. Have you got any idea, from 1912 to 1938, what years they were shut down? A. I haven't; I never paid much attention to it.

Q. You say you went to work for the Shattuck Denn. What was the date of that? A. That was in '35.

Q. 1935? A. No, '36.

Q. Do you know what month? A. No, sir. I can't remember that.

Q. You haven't any idea what month you went to work? A. It was in the first part of the year.

Q. January? A. No, I don't think so.

Q. February? A. Either February or March.

Q. What job did you get at the Shattuck Denn when you started in? A. Well, I was started out as trammer.

Q. What was your rate of pay? A. Mucker's wages.

Q. What were the mucker's wages at that time? A. \$4.40, I think.

Q. The same as you were getting at the time you quit the Phelps Dodge? A. Yes.

Q. Have you worked continuously for the Shattuck Denn Mining Company since February, 1936? A. I have.

Q. What is your present job with that company? A. Steel Sharpeners helper.

Q. What is your rate of pay on that job? A. \$5.78.

Q. Did you ever have occasion to talk with the employment agent of the Phelps Dodge Corporation after this particular interview that you have testified to? A. No.

*George Gerhardt—For National Labor Relations Board
—Direct.*

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You are now drawing \$5.78 a day? A. \$5.76. I made a mistake.

Q. \$5.76? A. Yes, sir.

Q. Have you ever joined the union? A. Yes, I joined the union when I first went over there and dropped out.

Q. When you first went over where? A. Over at the Denn.

Q. That is about a year ago? A. Yes, sir.

Trial Examiner Kennedy: That is all. Anything further? (No response.)

(Witness excused.)

Mr. Persinger: Mr. Gerhardt.

GEORGE GERHARDT, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: George Gerhardt.

Direct examination:

Q. (By Mr. Persinger) Mr. Gerhardt, were you formerly employed by the Phelps Dodge Mining Company? A. Yes, sir.

Q. When were you first employed? A. Employed in 1912, the first time I worked for them.

*George Gerhardt—For National Labor Relations Board
—Direct.*

Q. How long did you work that time? A. I worked up until along September of 1913.

Q. When were you employed next? A. 1915; along in June some time—the month of June.

Q. Until when? A. Up until the strike.

Q. No lay-off during that period? A. I was off three months during that period.

Q. In what year? A. In '22.

Q. And you haven't had a lay-off since '22? A. No. I worked steady from '22 up until the strike.

Q. What job did you have just before the strike? A. Working in the steel shop sharpening steel.

Q. What was your rate of pay? A. \$5.24.

Q. \$5.24? A. Yes.

Q. You went out on strike? A. Yes.

Q. How long had you been receiving the rate of \$5.24 before the strike? A. Something like about three months, I think; something like that.

Q. What had been your job prior to that time? A. Before that I was sharpening steel.

Q. What was your rate of pay at that job? A. \$5.93.

Q. Were you ever told by anyone why your rate had been reduced? A. No, they never did tell me why.

Q. Who reduced it? A. Jim Hart.

Q. What was his position? A. He was foreman of the shop.

Q. You went out on strike? A. Yes, sir, I went out on strike.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last time you were on the picket line? A. The 23rd of July was the last day I was on the picket line.

Q. After the strike did you apply for work? A. I was up once in September.

*George Gerhardt—For National Labor Relations Board
—Cross.*

Q. And to whom did you apply? A. Well, I was up to the office there, and Mr. Bateman said there was nothing doing, so I never talked to him at all. I went on back, and never did go back any more.

Q. Was he speaking to you, or was he speaking to a group? A. Well, he was speaking to several other fellows there.

Q. Were there any strikers in the group? A. Not that I know of. There was a bunch of strangers there; I didn't know any of them.

Q. He said there was nothing doing? A. He said there was nothing doing, and I never talked to him at all; never asked him any more.

Mr. Persinger: I offer as Board's Exhibit 40, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 40.)

Mr. Persinger: You may inquire.

Cross examination:

Q. (By Mr. Evans) When was it, Mr. Gerhardt, that you saw Mr. Bateman? A. Along about the middle of September sometime.

Q. Of the year 1935? A. 1935, yes, sir.

Q. You say the last time you were on the picket line was about July 30th? A. July 3rd.

Q. Oh, July 3rd? A. Yes.

Q. 1935? A. Yes, 1935.

Q. And did you leave the day after that? A. No, sir, I have been there continuously all the time.

*George Gerhardt—For National Labor Relations Board
—Cross.*

Q. Have you been employed at all since that time? A. Not excepting on W. P. A. work, relief work.

Q. You haven't worked for anyone except on relief jobs? A. No, sir; I haven't worked no job outside at all.

Q. And have you received relief work rather continuously since July, 1935? A. Well, I have been on relief continuously ever since 1935, since I came out on strike.

Q. Well, we will take the year 1935, the balance of the year 1935. About how many days a week, or a month, were you working on relief? A. Well, sometimes I worked 11 days out of the month. That is about the most we ever did get, 11 days out of the month, and sometimes I got less than that.

Q. Is that true also for the years 1936 and 1937? A. 1936 and 1937; I have been on direct relief for the last year.

Q. For the last year? A. The whole last year.

Q. Not doing relief work? A. They put me on direct relief.

Q. May I ask why you were put on direct relief? A. Well, I have got a bad knee, and it gives away all the time.

Q. When you are doing the work? A. Yes, certain kinds of work; certain kinds of work I can do, and certain kinds I can't.

Q. When were you born, Mr. Gerhardt? A. What is that?

Q. I say, when were you born? A. When were I born?

Q. Yes. A. May 15, 1875.

Q. 1875? A. Yes.

Q. You are now approximately 63 years of age? A. Pretty near it; I will be in May.

Q. You were working in the surface shops as a steel sharpener? A. Yes, sir.

Q. Mr. Reifsnider is in charge of those shops, is he? A. He is Master Mechanic, yes.

*George Gerhardt—For National Labor Relations Board
—Redirect.*

*William Graham—For National Labor Relations Board
—Direct.*

Q. And he was Master Mechanic in 1935, is that right?
A. Yes.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Yes, I have one question.

Redirect examination:

Q. (By Mr. Persinger) How long have you had a bad knee, Mr. Gerhardt? A. I got that knee hurt in 1913.

Mr. Persinger: That is all.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want your old job back with Phelps Dodge? A. Yes, I would like to have it back.

Trial Examiner Kennedy: That is all. Anything further of this witness?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

WILLIAM GRAHAM, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: William Graham.

Direct examination:

Q. (By Mr. Persinger) Mr. Graham, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed there? A. In 1928.

*William Graham—For National Labor Relations Board
—Direct.*

Q. Was that with Phelps Dodge, or C. & A.? A. Phelps Dodge.

Q. And how long did you work? A. About a year and a half.

Q. And you returned to work when? A. In 1934.

Q. What month? A. In June.

Q. Did you work after 1934? A. One year.

Q. Did you go out on strike? A. Yes, sir.

Q. At the time of the strike were you a member of the Union? A. Yes, sir.

Q. What was your job just prior to the strike? A. Pocket man.

Q. What rate of pay was that? A. \$4.40.

Q. Were you on the picket line during the strike? A. Yes, sir.

Q. What was the last day you were on the picket line? A. August 24th.

Q. When was the strike called off? A. The night of August 24th.

Q. Since the strike, have you applied for work with the company? A. I have.

Q. When? A. The first week in September.

Q. You mean of the same year as the strike? A. Yes, sir; '35.

Q. To whom did you apply? A. To Mr. Bateman.

Q. Where? A. At the employment office—Phelps Dodge employment office.

Q. What time of day? A. About 9:00 o'clock in the morning.

Q. Do you know what day of the week? A. No, I don't.

Q. Was anyone else present? A. No, sir.

Q. What did you say to Mr. Bateman? A. I asked Mr. Bateman if there was any chance of going to work.

William Graham—For National Labor Relations Board
—Cross

Q. What did he say? A. He told me that the committee had to pass on all of the men that were hired, and the committee would not pass on any man that came out on strike.

Q. Did he tell you what committee? A. He did not.

Q. Was anything else further said at that time? A. That is all.

Q. Have you applied since then? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 41 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 41.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Have you ever made application to the employment agent of Phelps Dodge Corporation since that talk with Mr. Bateman that you have just referred to? A. I have not.

Q. Have you been an employee of Phelps Dodge Corporation at any time since June 10, 1935? A. I have not.

Q. Are you employed at the present time? A. I am.

Q. By whom? A. Shattuck Denn.

Q. How long have you lived in the Bisbee district, Mr. Graham? A. 29 years, 11 months.

Q. Have you been here most of that time? A. I have.

Q. Do you remember any time during that period when the Shattuck Denn Mining Company was not here? A. Do you mean not here, or closed down?

*William Graham—For National Labor Relations Board
—Cross.*

Q. Well, has the Shattuck Denn Mining Company been in existence, to the best of your knowledge, since your birth?

A. Yes, it has been in existence.

Q. Where do you live at the present time? A. 941-B, Tombstone Canyon.

Q. Is that where you lived in July and August of 1935?

A. Yes, sir.

Q. Were you in the picket line every day? A. Practically every day. I don't remember any that I missed.

Q. Were you ever held for questioning in any incident involved at the time of the strike? A. I was detained about an hour and a half in the Lowell Jail one night.

Q. What for? A. For sitting on the sidewalk.

Q. That was the only time that you were in during that period? A. That is all.

Q. Did you ever have any connection with that car that was blasted up at Tombstone Canyon near your place? A. No, sir.

Q. That is the truth? A. It is.

Q. Were you on relief during the time of the picket line? A. The last month of the strike.

Q. August was the first time you went on relief work, then? A. Yes, sir.

Q. How long did you continue on relief work? A. I put in one period.

Q. What period was that? A. That was that period in August—for the month of August.

Q. That is the only time that you have worked on relief? A. That's all.

Q. What other employment have you had since June 10, 1935? A. I worked in the Boriane Mine out of Kingman, Arizona.

Q. That was for the Boriane Mining Company? A. Yes, sir.

*William Graham—For National Labor Relations Board
—Cross.*

Q. When did you go to work there, Mr. Graham? A. About the second week in September.

Q. Of 1935? A. 1935.

Q. What was the job that you obtained at the Borian Mining Company? A. A mucker.

Q. What was your rate of pay? A. \$4.

Q. How many days a week were you working when you started there? A. Seven days.

Q. At the time that you left the employ of Phelps Dodge Corporation, I believe you have testified you were receiving \$4.40 a day? A. Yes, sir.

Q. How many days a week were you working? A. Five days.

Q. How long did you stay with the Borian Mining Company? A. Eight or nine month.

Q. Did you work continuously during that period? A. Yes, sir.

Q. What kind of mining was the Borian Mining Company engaged in? A. Tungsten.

Q. How many men did they employ? A. It varied quite a bit.

Q. Approximately how many? A. I have seen 150 there, and at other times 50.

Q. Do you know whether or not the Borian Mining Company is still operating? A. I know that their mill burnt down here not long ago, and they closed down. I don't know whether they have re-opened or not.

Q. But up until that time they had been operating? A. Yes, sir.

Q. So far as you know, that was a temporary shut-down? A. Yes, sir.

Q. You say you worked, then, for about eight months with the Borian Mining Company? A. Yes, sir.

Q. That was from September, 1935? A. September until May.

*William Graham—For National Labor Relations Board
—Cross.*

Q. Until May of 1935? A. May of 1936.

Q. May of 1936? A. Yes, sir.

Q. How did you happen to leave that job? A. I was discharged.

Q. During the course of your employment at the Borian Mining Company did your rate of pay ever exceed the rate that you started at, which I believe you testified was \$4? A. It did not.

Q. You were employed, then, during that period at \$4 a day, seven days a week? A. Yes, sir.

Q. Continuously during the period? A. Yes, sir.

Q. Did you receive your board there? A. No, sir.

Q. What did you do after you were discharged by the Borian Mining Company? A. I came to Bisbee.

Q. In May of 1936? A. Yes, sir.

Q. Did you obtain employment here in Bisbee? A. I did not.

Q. How long was it before you did obtain employment? A. About a month.

Q. Then you got a job in June of 1936? A. Yes, sir.

Q. What was that job? A. Mining.

Q. Who for? A. Sunshine Mining Company in Kellogg, Idaho.

Q. Oh, you left the district then? A. I did.

Q. How long did you stay here when you came back from Kingman? A. About a month.

Q. And then you went direct to Kellogg, Idaho? A. No, I went to Butte, Montana.

Q. Did you work at Butte? A. I did not.

Q. Did you go from Butte to Kellogg? A. Yes, sir.

Q. What was the approximate date of your first employment with the Sunshine Mining Company? A. About June 15th.

Q. 1936? A. Yes, sir.

*William Graham—For National Labor Relations Board
—Cross.*

Q. What was your job with that company? A. Miner.

Q. At what rate of pay did you start? A. \$5.75.

Q. \$5.75 a day, and how many days a week did you work?

A. 7 days.

Q. And for what period of time did you work for the Sunshine Mining Company? A. Until November.

Q. November of 1936? A. Yes, sir.

Q. Why did you leave that job? A. My boy was sick, and I got a telegram to come home.

Q. During that period of time you were receiving the rate of pay which you have stated, 7 days a week, continuously, during that period? A. Yes.

Q. Did your rate ever increase? A. No, sir.

Q. You returned then to Bisbee in November of 1936?

A. Yes, sir.

Q. How long after your return did you get a new job?

A. About two weeks.

Q. And whom did you go to work for then? A. Shattuck Denn.

Q. And what was your job with Shattuck Denn at the time you started with them? A. Miner.

Q. What was the rate of pay that you started on? A. I am not positive of that.

Q. Was it in excess of \$5.00? A. I am not sure of that.

Q. What was the exact date, can you recall, that you started to work for the Shattuck Denn? A. No, I can't. I believe it was about the 23rd, somewhere along there.

Q. Of December, 1936? A. Of November.

Q. Of November? A. Yes.

Q. Have you been working continuously for the Shattuck Denn Mining Company since that time? A. I have.

Q. At what job are you employed with that company at the present time? A. Raise man.

Q. What is your rate of pay? A. \$5.48.

Q. How many days a week do you work? A. 6 days.

*William Graham—For National Labor Relations Board
—Redirect.*

Q. What did you say that rate of pay was? A. \$5.48.

Q. At any time during the period which you have been employed by the Shattuck Denn Mining Company, has your rate of pay exceeded that amount? A. Yes, sir.

Q. What is the highest it has reached? A. I am not positive what the highest rate was. It was better than \$6.00.

Q. Do you know, Mr. Graham, whether or not the Sunshine Mining Company is still operating? A. Yes, it is.

Q. At the time you were employed there, approximately how many men were employed by that company? A. I think around 400.

Q. Is it not a fact, Mr. Graham, that the Sunshine Mining Company is the largest silver producer in the United States? A. I couldn't say.

Q. Have you ever heard that statement made? A. No, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Persinger) At the Sunshine Mine did you have to work 7 days a week? A. We worked 7 days on one week and 6 days on the other. On the change day we laid off.

Q. They were required hours? A. Yes, sir.

Q. Is there any difference between conditions in a silver mine than in the Copper Queen? A. Yes, sir.

Q. What? A. In those mines you had to go into work on your own time and come out on your own time. The copper mines you work 8 hours, collar to collar, in this state.

Q. Any other difference, that is, in the actual conditions under which you work? A. Sir?

Q. Any difference in the conditions under which you actually work? A. Different type of mines.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

*William Graham—For National Labor Relations Board
—Recross.*

Recross examination:

Q. (By Mr. Kitchel) Mr. Graham, would you rather work 6 or 7 days a week at the rate you were getting at the Sunshine Mining Company, than 5 days a week at the rate of \$4.40? A. At the present time I would rather work 5 days at \$4.40.

Q. You would prefer that? A. I would.

Q. And you would rather work 5 days a week at \$4.40 than you would 6 days a week at \$5.48, or whatever your present rate is? A. If I work them at the Phelps Dodge, yes.

Q. Have you discussed the answer to that question with any of the men out in the hall? A. I have not.

Q. Has it been mentioned at all? A. Not in my presence.

Q. No one stated to you that the Trial Examiner generally asked that question of the witnesses? A. No, sir.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Where is the Sunshine Mine? A. It is 12 miles from Wallace and 8 miles from Kellogg.

Q. What state? A. Idaho.

Q. At the time you were up there did you maintain a home in Bisbee? A. Yes, sir; I kept my wife and baby here, except for a month, when they were up there.

Q. Has your pay ever been less than \$4.40 at the Shattuck Denn Mine? A. No, sir.

Q. It has always exceeded that? A. Yes, sir.

Q. You read the local newspapers here, do you? A. I do.

Q. Did you see the account of yesterday's hearing in that paper? A. Yes, sir.

William Edward Sharp—For National Labor Relations Board—Direct.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

WILLIAM EDWARD SHARP, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: William Edward Sharp.

Direct examination:

Q. (By Mr. Persinger) Mr. Sharp, were you formerly employed by the Phelps Dodge Corporation? **A.** I was first employed by the Copper Queen in 1929.

Q. How long did you work? **A.** I don't know; it was somewhere around probably a year, and I was laid off there in the first of the depression.

Q. And when were you reemployed after that? **A.** I got a job on the 7th of June, was examined on the 9th of June.

Q. What year? **A.** In 1935; and then I went to work on the 10th of June and then came out on strike on the 11th of June.

Q. Were you on the picket line after that? **A.** Yes, I was.

Q. What was the last day you were on the picket line? **A.** I don't remember the exact date, but it was somewhere the 1st of August, I believe.

Q. After the strike was over, did you apply for reinstatement? **A.** I did.

*William Edward Sharp—For National Labor Relations
Board—Direct.*

Q. When? A. In about—it was in 1935, in October, somewhere around about the 15th.

Q. And to whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. In his office.

Q. Was anyone else present? A. There was not.

Q. What time of day was it? A. It was in pretty close to dinner time, lunch time.

Q. What did you say to Mr. Bateman? A. I asked him, "How's the chance to go to work?" And he said, "No, there isn't." And I asked him if it would do me any good to rustle, and he said "No," and I asked him why, and he said, "On account of the trouble you were in during the strike."

Q. Did you apply again after that? A. I did.

Q. When? A. In Morenci, Arizona, 1937; some time in September, I believe, as close as I remember.

Mr. Evans: We object to that. The application in Morenci, Arizona, has nothing to do with the Mines Division of the Copper Queen Branch at Bisbee.

Mr. Persinger: If the Examiner please, the complaint is issued against the corporation, and I expect the witness to bring out that Mr. Bateman happened to be employment manager at Morenci at this particular time. I think on those two scores it would be material.

Trial Examiner Kennedy: Read the question and answer, Mr. Reporter.

~ (The record referred to was read by the Reporter, as set forth above.)

Trial Examiner Kennedy: Objection overruled. It may stay in.

Q. (By Mr. Persinger) Did you answer? A. Mr. Bateman came out of the smaller office. It was the employment office, and he was going across the street to the larger build-

*William Edward Sharp—For National Labor Relations
Board—Cross.*

ing, and there was quite a few men standing around there. Who they were, I don't know.

I asked Mr. Bateman if there was any chance for me to go to work up there.

He said, "No."

I said, "Would it do me any good to rustle?"

He said, "No, it will not."

I asked him, "Why?"

He told me that on account of the trouble I was in in Bisbee I was no longer wanted. So I said, "Thank you."

He said, "I'm sorry," and I walked off.

Q. Have you applied since? A. I have not.

Mr. Persinger: I offer in evidence Board's Exhibit No. 42, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 42.)

Mr. Persinger: Your witness.

Cross examination:

Q. (By Mr. Evans) You were not employed by Phelps Dodge Corporation at any time between 1930 and June 8, 1935, were you, Mr. Sharp? A. In 1930?

Q. Between 1930 and 1935. A. I was laid off there in the first part of the depression. I went to work in '29, and then I was laid off the first part of the depression. I think it was in '30, I believe.

Q. And after that the only time you were employed was about June 8th, with the instructions to report to work on June 10th? A. I got a job on June 7th.

Q. On June 7th? A. Yes, sir.

William Edward Sharp—For National Labor Relations Board—Cross.

Q. And you were to report on June 10th? A. Yes, sir.

Q. June 10, 1935, is the only day that you worked? A. Yes, sir.

Q. Did you work that day? A. Yes, sir.

Q. Full shift? A. Yes, sir.

Q. When were you in Morenci? A. Some time in September. I couldn't say exactly.

Q. What year? A. 1937.

Q. 1937? A. Yes, sir.

Q. As a matter of fact, you did not see Mr. Bateman up in Morenci at that time, did you? A. Yes, sir.

Q. You did not see him in his office, did you? A. No, sir; I didn't.

Q. How long had you been there when you saw Mr. Bateman? A. I got in there that morning.

Q. Whereabouts did you see him? A. Out in front of the employment office, and he was going across the street to the larger building on the other side.

Q. As a matter of fact, you did not have any conversation at all with Mr. Bateman in Morenci, did you? A. Yes, sir; I did.

Q. Are you employed at the present time? A. Well, yes. I am employed with the Alpine Mining Company, but off on compensation now.

Q. You are receiving workmen's compensation? A. Yes, sir.

Q. Your hand was disabled in an accident when you were employed with the Alpine Mining Company? A. Yes, sir.

Q. Where is the Alpine Mining Company located? A. It's about 26 miles from Elfrieda, Arizona, in the Chiricahua Mountains.

Q. How long have you been working for that company? A. I went to work there right after I came down from Morenci—well, about 15 days after that. It was in October when I went to work, October 18th or 19th, I think.

*William Edward Sharp—For National Labor Relations
Board—Cross.*

Q. 1937? A. Yes, sir.

Q. What work were you doing for the Alpine Company?

A. At the time I was hurt I was mining.

Q. What pay were you receiving? A. \$5 a day.

Q. Have you received \$5 a day ever since you have been working for them? A. No, sir, I haven't.

Q. What did you receive when you first went to work for them? A. I was mucking; \$5 a day.

Q. How long were you mucking for them? A. Well, just a few days before I hurt my finger.

Q. You hired on as a mucker, did you? A. Yes, sir.

Q. With Phelps Dodge Corporation? A. No, sir; as a blacksmith's helper.

Q. What rate of pay? A. I don't know; I don't remember.

Q. You never worked as a blacksmith's helper before, did you? A. I hired out before in a blacksmith shop as a hammer driver.

Q. That was back in 1930? A. That was back in 1929 when I hired out there.

Q. And you worked at that time as a hammer driver? A. Yes, sir.

Q. You don't know what rate of pay a blacksmith's helper was receiving in 1935, then? A. No, sir; I don't.

Q. Did you ever go to get your pay for the one day that you worked? A. No, sir; I didn't.

Q. Where were you employed, if at all, prior to the time you went to work for the Alpine Company? A. Where was I working when I went to work there?

Q. No, prior to the time you went to work for the Alpine Company. A. Before I went to work for the Alpine Company I was working at Lordsburg with the Bonnie Mining Company.

Q. Banner? A. Bonnie.

Q. Bonnie? A. Bonnie.

*William Edward Sharp—For National Labor Relations
Board—Cross.*

Q. B-o-n-n-i-e? A. Yes, sir.

Q. When did you go to work for that company? A. It was in 1936, the last part of December or January. I don't know exactly the date.

Q. Of 1936? A. Yes, sir.

Q. What did you hire on as? A. Miner.

Q. What rate of pay did you receive? A. \$5 a day.

Q. How long did you work at the Bonnie Mining Company? A. About eight months.

Q. Did you receive more than \$5 a day at any time during that period? A. No, sir.

Q. What? A. No, sir.

Q. How many days a week did you work? A. Seven days a week, except when I would lay off once in a while.

Q. Were you discharged from the Bonnie Mining Company? A. No, sir.

Q. You left there voluntarily? A. Yes, sir.

Q. About what month of the year 1936 did you leave? A. It was some time in August—in August, 1937, when I left.

Q. August of 1937? A. Yes, sir.

Q. And you worked there continuously for about eight months? A. Yes, sir.

Q. Where were you employed, if at all, prior to the time you went to work for the Bonnie Mining Company? A. Well, I was working for Cason on a—I don't know—a W. P. A. job, on a road job in the underpass in Douglas.

Q. What was the name of your employer? A. J. A. Cason.

Q. He was the contractor on that job, was he? A. Yes, sir.

Q. When did you go to work for him? A. Well, I worked for him—I couldn't say exactly, but it was just a few months before I went to work for the Bonnie Mining Company.

Q. You worked for him for several months, however? A. For probably three or four months.

*William Edward Sharp—For National Labor Relations
Board—Cross.*

Q. How many days a week did you work for Cason? A. Well, 40 hours a week.

Q. What rate of pay did you receive? A. Well, I was on a job—I was a hod-pan operator; 62½ cents an hour and 75 cents an hour.

Q. That is, you received 62½ cents an hour when you first went to work? A. Yes, sir.

Q. And then later 75 cents an hour? A. Yes, sir.

Q. And that was for 40 hours a week? A. Yes, sir.

Q. For whom did you work prior to the time you started to work for the Cason outfit? A. I worked for Pleasant & Hasler.

Q. Where did you work for Pleasant & Hasler? A. I worked on this—from Fort Huachuca to Bisbee—on the road into Bisbee—not into Bisbee, but on the other side.

Q. When did you work for them? A. I went to work for them in 1935. I think it was somewhere around the 1st of November, to the best I remember, or the last of October.

Q. How long did you work for them? A. I worked for them from then until the time I went to work for Cason.

Q. You worked continuously, then, from either the latter part of October or the early part of November, 1935, until about August of 1936? A. Well, except a few days before I went to work on the Cason job; just a few days.

Q. What rate of pay did you receive from Pleasant & Hasler? A. Well, when I first went to work there, I went to work there at 50 cents an hour, common labor.

Q. And how many hours a week? A. Forty hours a week.

Q. Then what did you receive? A. Then I went from that to 62½ cents an hour.

Q. How long did you work at 50 cents an hour? A. About four days, I think—four or five days.

Q. And from then on did you have work at 62½ cents an hour? A. No, sir, the last part of the time I was there I got 75 cents an hour.

William Edward Sharp—For National Labor Relations Board—Cross.

Q. How long did you work at 62½ cents an hour? A. Well, up until about two weeks before I left there.

Q. And the last two weeks you were there you received 75 cents an hour? A. About that.

Q. 62½ cents an hour for a 40-hour week was more money than you would have made in the blacksmith shop as a blacksmith's helper for P. D., isn't it? A. Well, if you worked steady, it is.

Q. And you worked steadily during that period, didn't you? A. Well, when it didn't rain or snow and you couldn't work, but there were lots of weeks that I didn't get 40 hours in.

Q. Have you at any time since August, 1935, up to the present time had any case involving your employment or discharge from the National Labor Relations Board other than this case? A. Well, not exactly, no. I never have had the Labor Relations Board before, before this time, no.

Q. This is the only time that you have had any case before the Labor Board? A. Yes, sir.

Q. Didn't you seek reinstatement at the Bonnie Mine? A. I did.

Q. And you filed an application for reinstatement before the Labor Board? A. No, sir.

Q. How did you happen to leave the Bonnie Mine? A. Well, my father got sick just before I left there, and I got a wire to come home, so I came home, and it was about two or three days before payday, as I recall, and I asked them if they would send me my check, and they said they would, and then I wired back and told them not to send it, that I didn't need it. And then when I went back my time was waiting for me, my full time.

Q. And then you didn't file a petition with the Labor Board and seek reinstatement? A. Not with the Labor Board, I did not.

Q. Did you file a request for reinstatement with the union? A. Well, yes.

William Edward Sharp—For National Labor Relations Board—Redirect.

Q. And did they take your case up before the Labor Board? A. They did not.

Q. Was any disposition made of that request for reinstatement? A. Not that I know of. I left that place shortly after, in a few days.

Q. You are not seeking any reinstatement or back pay of any kind from the Bonnie, then? A. No, sir.

Q. Do you know whether that case is still pending? A. No, sir, it is not.

Q. How do you know that? A. Well, I don't imagine it would be. There was never nothing said about it, and I dropped it, and that was all there was to it.

Q. You have heard nothing further in regard to it? A. No, sir.

Mr. Evans: No further questions.

Redirect examination:

Q. (By Mr. Persinger) Is that the Bonnie Mining Company, or Banner Mines? A. Well, it is the Bonnie Mine now, is what they call it. It used to be the Banner.

Q. Where is your home? A. In Bisbee is where I was raised.

Q. I mean, where is your home at the present time? A. Well, it is at the Alpine Mining Company out in the Swiss-helm Mountains.

Q. Are you married? A. Yes, sir.

Q. Is your wife up there with you? A. Yes, sir.

Q. How far is that from Bisbee? A. It is about fifty some-odd miles.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

**Richard Johnson—For National Labor Relations Board—
Direct.**

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You don't know what you were supposed to be paid at the Phelps Dodge Company? A. No, I don't.

Q. What was your classification to be there? A. Blacksmith's helper.

Q. Blacksmith's helper? A. Yes, sir.

Q. When did you go to work for the Alpine Company? A. About October 18th, something like that.

Q. Is that last year? A. Yes.

Q. 1937? A. Yes, sir.

Q. Do you consider that a permanent job? A. No, sir.

Q. Why not? A. Well, since the drop in silver they have laid off quite a few men, and I don't know exactly whether I will be working when I go back or not. If they are, I do, and if they are not, I don't.

Trial Examiner Kennedy: Nothing further.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

RICHARD JOHNSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Richard Johnson.

Direct examination:

Q. (By Mr. Persinger) Mr. Johnson, have you ever been employed by the Phelps Dodge Corporation? A. No, I haven't.

*Richard Johnson—For National Labor Relations Board—
Direct.*

Q. Have you ever applied for work at Phelps Dodge Corporation? A. Yes, sir.

Q. When? A. In the months of January, February and March. Just after the strike.

Q. That would be 1936? A. '36.

Q. Any members of your family formerly employed by the Phelps Dodge Corporation? A. Yes, father and brother.

Q. To whom did you apply for work? A. Mr. Bateman.

Q. Did you actually talk to him at any time? A. Yes, in his office.

Q. When was the first time you spoke with him? A. In January.

Q. Anyone else present? A. No.

Q. What time of day was that? A. About 9:30.

Q. In the morning? A. Yes, sir.

Q. What did you ask Mr. Bateman? A. I asked him if there was any chance for a job.

Q. What did he say? A. He said, Well, my father and brother weren't in very good standing with the company, and that there wouldn't be no chance.

Q. Did you cease trying to get on? A. No, I kept trying.

Q. How long did you rustle? A. Three months.

Q. Did you ever speak to Mr. Bateman again? A. Yes, sir.

Q. When? A. Well, I spoke to him several times in those three months.

Q. When was the last time you spoke to him? A. In March.

Q. Where did you see him that time? A. In his office.

Q. Anyone else present at that time? A. No.

Q. What was said then? A. Well, he told me, he said, "Well, I thought we had this out once before."

And I said, "Yes."

And I said, "Well, I thought maybe if I kept rustling there would be a chance. I never have worked here."

*Richard Johnson—For National Labor Relations Board—
Cross—Redirect.*

And he said, "Well, no, there wouldn't be no chance at all."

Q. Anything further said? A. No.

Q. Have you applied for work since? A. No.

Mr. Persinger: Take the witness.

Cross examinations

Q. (By Mr. Kitchel) Mr. Johnson, what months did you say you rustled in? A. January, February and March.

Q. Of what year? A. '36.

Q. When did you graduate from Bisbee High School? A. '34.

Q. In 1934? A. Yes, sir.

Q. You have stated, I believe, that you have not been employed by the Phelps Dodge Corporation? A. I never have.

Q. Are you employed at the present time? A. Yes.

Q. By whom? A. Shattuck Denn.

Q. When did you go to work for them? A. April 9th.

Q. Have you been employed continuously by them since that time? A. Yes, sir.

Mr. Kitchel: That is all.

Redirect examination:

Q. (By Mr. Persinger?) April 9th, of what year? A. '36.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Are you a member of the union? A. Yes, now I am.

Q. When did you join? A. When I first started to work for Shattuck and Denn.

*Lester F. Bethel—For National Labor Relations Board—
Direct.*

Q. When was that, again? A. When I first started working at Shattuck and Denn.

Q. I know, but what year? A. '36.

Q. Did you have any part in this strike that we are considering here? A. No, sir.

Trial Examiner Kennedy: That is all. You are excused.

(Witness excused.)

Mr. Persinger: Shall we take a few minutes recess?

Trial Examiner Kennedy: Yes, we will have a 10-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: Mr. Bethel.

LESTER F. BETHEL, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Lester F. Bethel.

Direct examination:

Q. (By Mr. Persinger) Mr. Bethel, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. After the merger went through. I was working for the C. & A. before.

Q. How long had you worked with the C. & A.? A. I started in in '25.

**Lester F. Bethel—For National Labor Relations Board—
Direct.**

Q. Did you work continuously until the merger? A. I did.

Q. After the merger how long had you worked for Phelps Dodge? A. Until the 10th of June, 1932.

Q. '32? A. No, '35.

Q. You mean the time of the strike? A. The time of the strike.

Q. You were not laid off during the general lay-off? A. No, sir.

Q. What job did you have at the time of the strike? A. Motorman.

Q. What rate of pay were you receiving? A. \$5.24.

Q. And you went out on strike? A. I did.

Q. Were you on the picket line? A. I was.

Q. What was the last day you were on the picket line? A. About the 20th of August.

Q. Since the strike have you applied at any time for reinstatement with the company? A. I have.

Q. When was the first time? A. The second day the strike was called off.

Q. To whom did you apply? A. Murray Bateman.

Q. Did you speak to him that day? A. Not that day. I stood out in front.

Q. Did you ever speak to him? A. Sir?

Q. Did you ever speak to Mr. Bateman? A. Not that day.

Q. Any other day? A. I went back about four days, and about the fifth day I went in his office.

Q. What time of day was that? A. About 9:00 o'clock.

Q. Was anyone else present? A. That insurance man, Mr. Hollingshead.

Q. He was in Mr. Bateman's office? A. He was.

Q. Did you say anything to Mr. Bateman? A. Yes, sir.

Q. What did you say to Mr. Bateman? A. I asked him for a job.

*Lester F. Bethel—For National Labor Relations Board—
Direct.*

Q. What did he say? A. He said the company had never expressed themselves as to what they were going to do with the striking men.

Q. Did he say anything else? A. He said to come back later.

Q. Did you go back later? A. I did.

Q. When? A. In December of the same year.

Q. Did you see Mr. Bateman at that time? A. I did.

Q. Where? A. In his office.

Q. What time of day? A. About 9:00 o'clock.

Q. Was anyone else present? A. Mr. Hollingshead was in his office. He wasn't in Mr. Bateman's office.

Q. He was not in Mr. Bateman's office? A. I don't believe so.

Q. What was said on that occasion? A. He said I had an outstanding record. He first asked me if I wanted to go to work. He said, "You want to go to work, do you?"

I said, "Yes."

He said, "You have an outstanding record, signed by Harry Lavender, but I cannot make no exceptions in your case."

Q. Was anything further said? A. I asked him for a recommendation then.

Q. What did he say? A. He said he would be glad to give me one.

Q. Did he give you one? A. He said to come back later, that he was pretty busy that day. He had hired some men.

Q. Did you go back later? A. I never did go back later.

Q. Have you applied for work at any time since then? A. I have.

Q. When? A. Last year.

Q. What time last year? A. Well, it was somewhere around the first of April—May—the day after Vic Smith got his settlement, whenever that was.

Q. Whom did you see? A. Murray Bateman.

*Lester F. Bethel—For National Labor Relations Board—
Cross.*

Q. Where? A. I asked him for a job in the Lowell waiting room.

Q. That is the waiting room for what? A. Where they wait for busses down at Lowell.

Q. Anyone else there? A. The bartender.

Q. Anyone else? A. Yes. There were several lined up along the bar.

Q. What did you say to Mr. Bateman? A. I asked him if he was putting any of the Union men on. He said, "No, not yet."

Q. Anything further said? A. And we kept talking, and he said he had seen where Vic Smith got his settlement yesterday.

Q. Anything else? A. He said he would be willing to be shot for that much money himself; and then he said, no, he was just joking.

Mr. Evans: I move to strike the answer as immaterial.

Trial Examiner Kennedy: It may go out.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 43, the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 43.)

Mr. Persinger: Your witness.

Cross examination:

Q. (By Mr. Evans) Are you employed at the present time, Mr. Bethel? A. I am.

Q. By whom? A. By a Southern Pacific contractor.

Q. How long have you been so employed? A. The 5th of December, a year ago.

*Lester F. Bethel—For National Labor Relations Board—
Cross.*

Q. Since December 5, 1937? A. '37; yes, sir.

Q. Or 1936? Last December, or a year ago last December? A. A year ago last December, the 5th, '36.

Q. 1936, that would be? A. Yes.

Q. Have you been continuously employed on that job? A. I have.

Q. What rate of pay have you been receiving? A. I received \$65.00 a month up until May, and \$130 a month since then.

Q. Since May, 1936? A. '37.

Q. Or '37, yes. Prior to May, 1937, you received— A. \$65.00 a month.

Q. (Continuing)—\$65.00 a month. Were you doing any other work during that period you were receiving \$65.00 a month? A. I was, not.

Q. Were you receiving your board or room in addition to that? A. I had a house furnished; that was all.

Q. You had a house furnished, did you? A. Yes, sir.

Q. That was at Hereford? A. Fort Huachuca.

Q. Prior to December, 1936, were you employed? A. On WPA.

Q. By that, do you mean on relief work, or on these projects? A. Relief work for the county, building the road from Naco.

Q. I see. Other than the relief work, did you have any employment between June 10, 1935, and December of '36? A. Yes, sir. I worked 6 weeks for the Tungsten Production Company.

Q. That is in the Huachuca Mountains? A. It is.

Q. And what were you employed as? A. Miner.

Q. When were you employed there? A. About June 16th.

Q. What year? A. '35, at the time of the strike.

Q. You were employed with the Tungsten Production Company from June 16, 1935, for a period of about 6 weeks?

A. I was.

*Lester F. Bethel—For National Labor Relations Board—
Cross.*

Q. And what was your job? A. Mining.

Q. What rate of pay did you receive there? A. \$4.00 a day.

Q. And how many days a week? A. 5 days a week.

Q. Did you have any other jobs during that period? A. While I was working there?

Q. No, after you left there. A. I worked for Pleasant-Hasler about a week.

Q. And when did you go to work for Pleasant-Hasler? A. Well, for about the second day after I was let out from the Tungsten Production Company.

Q. Were you laid off, or did you leave the Tungsten Production Company voluntarily? A. I was laid off. It was closed down.

Q. And you only worked about a week for Pleasant-Hasler? A. Yes, sir; maybe a little longer, I wouldn't say exactly.

Q. What rate of pay did you receive from them? A. 50 cents an hour.

Q. And how did it happen you left the employ of the Pleasant-Hasler? A. Well, they called the strike off and I quit and came in and tried to get work back in the mine. I was away from home.

Q. Did you receive any other work after that? A. WPA.

Q. After you left Pleasant-Hasler? A. WPA.

Q. Then you worked on PWA work until December, 1936, when you went to work for the Southern Pacific contractor? A. I did.

Q. How many days a week did you work for the PWA, or a month? A. \$50.00 a month is what I got, 11 days a month.

Q. Did you receive \$50.00 a month straight through that period? A. I did.

Q. At the present time you are working for Mr. Fletcher, I believe? A. No, sir; Mr. Fry.

*Lester F. Bethel—For National Labor Relations Board—
Cross.*

Q. He is the contractor with the Southern Pacific Company? A. He is.

Q. And you are receiving \$130.00 a month? A. Yes, sir.

Q. Are you also receiving your house? A. I am.

Q. Your house is furnished you in addition to that? A. It is.

Q. Any other facilities furnished you? A. No, sir.

Q. Lights? A. No; they charge for them; a cent a kilowatt.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by Trial Examiner Kennedy:

Q. (By Trial Examiner Kennedy) Do you consider your present employment permanent? A. No, sir. It ends the 13th day of this month.

Q. It ends the 13th of this month? A. They are taking out the trains, two trains.

Q. Have they offered you other employment? A. They have not. They give me two weeks' notice the day before yesterday that the 13th was the last.

Q. Do you want to go back to Phelps Dodge? A. Sure I would like to.

Q. You are a member of the Union, are you? A. I am.

Q. When did you join? A. I was a charter member the first night they got it up.

Q. That was what year, '33? A. Either '32 or '33, I believe; I don't remember exactly.

Q. Have you been a member continuously since then? A. I have.

Trial Examiner Kennedy: Anything further?

Mr. Evans: One more question.

**Lester F. Bethel—For National Labor Relations Board—
Cross.**

**Mike Mihelich—For National Labor Relations Board—
Direct.**

Cross examination (continued):

Q. (By Mr. Evans) You had no intention of leaving the employ of the Southern Pacific contractor until a few days ago when you received notice that they were cutting out those trains, did you? A. I did if I could get work here in town, for I own my own home here and I like to live here.

Q. You are being furnished a house where you are, are you not? A. Well, if you want to call it that.

Q. You are making better money out there than you could make in the mines? A. About the same, I guess.

Q. The work isn't as hard, is it? A. Just as hard as the work I had in the mines.

Q. All you do is drive a bus between Fort Huachuca and Hereford? A. Yes, but I get up at midnight every night.

Q. I know, but I am just asking you. You drive a bus between Fort Huachuca and Hereford? A. That is all; handle all the express and baggage.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

MIKE MIHELICH, called as a witness by and on behalf of the National Labor Relations Board, after being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Mike Mihelich.

Direct examination:

Q. (By Mr. Persinger) Mr. Mihelich, were you formerly employed by the Phelps Dodge Corporation? A. I worked for the C & A.

*Mike Mihelich—For National Labor Relations Board—
Direct.*

Q. You worked first with the C & A? A. The C & A, yes.

Q. When did you go to work for the C & A? A. 1916.

Q. And you worked how long? A. Worked along until the merger in the Copper Queen.

Q. You worked from 1916 until the merger? A. At the time of the strike.

Q. You kept on through the merger, through the general layoff, up to the time of the strike? A. Yes.

Q. At the time of the strike, were you a member of the Union? A. Yes, I was.

Q. You went out on strike with the Union? A. Yes, I did.

Q. Were you on the picket line? A. I was.

Q. What was your job just before the strike? A. Timberman.

Q. At what rate of pay? A. \$5.24.

Q. Since the strike have you applied for reinstatement? A. I did.

Q. When? A. Right away; a few days after the strike was called off.

Q. To whom did you apply? A. To Mr. Bateman, in his office, employment office.

Q. Was anyone else present? A. Once there was one employee with him.

Q. And what did you say to Mr. Bateman? A. I asked him, "Mr. Bateman, how's the chance for a job?"

Q. What did he say? A. He said, "Nothing doing for you."

Q. Anything further said at that time? A. He didn't say nothing more at that time at all.

Q. Did you apply at any time after that? A. I did.

Q. When? A. A couple of times after that.

Q. But when? A. After the strike.

Q. When, what month? A. Oh, that was sometime in September month.

**Mike Mihelich—For National Labor Relations Board—
Cross.**

Q. Did you apply to Mr. Bateman? A. Yes, I asked him for a job, and he told me, "No job for you."

Q. Is that all he said? A. That is all he said.

Q. Have you applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 44, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 44.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Mihelich, are you at present an employee of the Phelps Dodge Corporation? A. Please question again?

Trial Examiner Kennedy: Read the question, please, Mr. Reporter.

(Thereupon the question was read by the Reporter as above recorded.)

A. Now? No, not now.

Q. (By Mr. Kitchel) Have you ever been an employee of the Phelps Dodge Corporation since June 10, 1935? A. No, sir.

Q. Did you say that you were in the picket line every day? A. Not every day; off and on, every second or third day, sometimes a week after, just in between.

Q. When was the last time you were in the picket line? A. I was in the picket line a week before the strike was called off.

Q. A week before? A. A couple of days before the strike was called off.

*Mike Mihelich—For National Labor Relations Board—
Cross.*

Q. When was the strike called off? A. I believe it was the 24th of August.

Q. And the last time you were on the line, then, was two or three days before that? A. Two or three days before the strike was called off.

Q. Were you in the picket line on the 21st of August? A. I don't know the date, anyway.

Q. During the course of the time when the picket line was there, were you on relief? A. No, sir.

Q. Were you employed at all? A. No, sir.

Q. Are you employed at the present time? A. No, sir.

Q. Have you had any employment since June 10, 1935? A. Since 1935 I was two days on the soil erosion; then I was working for a leasor for a couple of months.

Q. What leasor was that? A. Jim McKenna.

Q. When did you start working for him, Mr. Mihelich? A. I started to work in 1936, November month.

Q. November 1936? A. Yes.

Q. What kind of work were you doing for Mr. McKenna? A. Track and pipes in the mine.

Q. What was your rate of pay? A. For Mr. McKenna?

Q. Yes. A. I was one time \$5.75; then \$5.50; then they raised them to \$5.75.

Q. How long did you say you worked for Mr. McKenna? A. About 10 months.

Q. About 10 months? A. 10 months.

Q. Do you remember the rate of pay, whether it continued to be the same during that period? A. Yes. Later it was—at first it was only \$5.50, and then he raised it to \$5.75. That was the last pay.

Q. And when did you leave McKenna's employ? A. November month; the 18th of November, last year.

Q. 1937? A. 1937.

Q. You were laid off at that time? A. He shut down.

Q. Have you had any work since then? A. No, sir.

*Mike Mihelich—For National Labor Relations Board—
Cross.*

Q. Are you on relief at the present time? A. No, sir.

Q. Have you been on relief at any time during this period of time? A. No, sir.

Q. How old are you, Mr. Mihelich? A. I will be 60, now.

Q. What type of work were you doing in May of 1935, prior to the walkout? A. I was timberman.

Q. You have testified that you worked for Mr. McKenna for about 10 months; is that correct? A. Ten months; something like that.

Q. During that course of time, how many days a week did you work? A. We worked—before, we worked 5 days; then 6. For a time we worked only 5.

Q. Did you work continuously during that whole time? A. During the 10 months, yes.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Do you want your old position back at Phelps Dodge? A. I would like to have it.

Q. Are you a member of the Union? A. Not now.

Q. Were you ever? A. I was.

Q. When? A. Before the strike was called.

Q. How long had you been a member at the time of the strike? A. Previous to the strike? About two years.

Q. And then you dropped out after the strike? A. After the strike I didn't pay my dues. I didn't have any money.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Pete Caretto.

*Pete D. Caretto—For National Labor Relations Board—
Direct.*

PETE D. CARETTO, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Pete D. Caretto.

Direct examination:

Q. (By Mr. Persinger) Mr. Caretto, were you formerly employed by Phelps Dodge Corporation? A. I was; yes, sir.

Q. When were you first employed by them? A. 1922.

Q. Was that Phelps Dodge or C. & A.? A. Calumet & Arizona Mining Company.

Q. How long did you work for the C. & A.? A. Up until they merged in 1931.

Q. Did you continue to work immediately after the merger? A. Yes, sir.

Q. And you worked there how long? A. Until '31.

Q. And you were off how long? A. I was off until the spring of '32.

Q. And you went back to work then? A. Yes, sir.

Q. How long did you work there that time? A. Up until the strike.

Q. At the time of the strike what was your position? A. I was top-man at the Cole.

Q. What rate of pay did that carry? A. \$5.00.

Q. What is that? A. \$5.00.

Q. Before you were transferred to Cole, what was your job? A. Miner.

Q. How long had you been mining? A. I would say about two months.

Q. Before you went to mining, what was your job? A. I was on the cages.

Q. Were you a member of the Union at the time of the strike? A. I was; yes.

*Pete D. Caretto—For National Labor Relations Board—
Direct.*

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. After the strike was over did you apply for reinstatement? A. Not after the strike; no, sir.

Q. Why not? A. I didn't figure it was no use going up there after the strike.

Q. Did you have any reason for thinking that? A. Well, I was up there on the picket line one day and I asked him, "What is the chance for my job?" And he said, "No, no."

Q. What day was that? A. The 21st of August.

Q. Did anybody else there ask for their jobs that day? A. There was.

Q. Tell me what happened that day. A. There were quite a few of them up there; some 30 or 40 up there, and I asked him—he come out and hollered for miners. One fellow spoke up and said, "I'm a miner."

Another fellow spoke up and said, "I'm a miner."

I spoke up and said, "What's the chance for getting my job back?"

He says, "Nothing doing."

He said, "You strikers won't go to work for the company any more."

Q. And you have not applied since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 45, the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 45.)

Mr. Persinger: Take the witness.

*Pete D. Caretto—For National Labor Relations Board—
Cross.*

Cross examination:

Q. (By Mr. Evans) On August 21st the strike was still in progress? A. It was.

Q. And the picket line was still out there? A. It was.

Q. And you were picketing? A. Yes.

Q. Endeavoring to keep other people from going to work? A. Sir?

Q. Endeavoring to keep other people from going to work? A. No, sir.

Q. What were you doing there? A. Just up there talking to him.

Q. What was your purpose in being there? A. My purpose was to see if I could get my job back and go back to work.

Q. Is that why you were on the picket line? A. It was on that particular morning.

Q. That is why you were on the picket line from June 10, was it? A. No, sir.

Q. When did you suddenly change your purpose in being on the picket line? A. Two days before the strike was called off.

Q. When was the strike called off? A. On the 24th of August.

Q. What date would two days before the strike was called off be? A. The 22nd of August.

Q. We are talking about the 21st, not the 22nd. A. I didn't hear your question.

Q. I say, the time that you said you were on the picket line, and Mr. Bateman said there would be no more jobs for "you strikers," was on the 21st, was it not? A. On the 21st; yes, sir.

Q. I believe you testified that it was not until the 22nd that you decided that you wanted to go back to work? A. No, sir; the 21st.

*Pete D. Caretto—For National Labor Relations Board—
Cross.*

Q. Didn't you state that it was on the 22nd, or two days before the strike was called off, that you decided that you wanted to go back to work? A. No, sir.

Q. I must have mistaken you. You are not in the employ of the company at the present time? A. No, sir.

Q. You have not been an employee of Phelps Dodge Corporation since June 10, have you? A. No, sir.

Q. 1935. What are you doing at present? A. Working for the W. P. A.

Q. Are you working on relief work? A. Yes, sir.

Q. Have you been employed other than on W. P. A. or other such relief work at any time since June 10, 1935? A. Since the strike has been called off?

Q. Well, since you walked out on June 10, 1935? A. I have worked after the strike was called off.

Q. Where did you work? A. I went to work for a Shattuck leasor.

Q. For whom? A. For a Shattuck leasor.

Q. What was his name? A. McPhail and Riley.

Q. When did you work for them? A. I went to work for them in 1936.

Q. What month? A. December.

Q. How long did you work for them? A. Three months and a half.

Q. What was your job? A. Miner.

Q. And how many days a week were you working? A. 5 days a week; \$5.00 a day—6 days a week.

Q. And you worked for them about three months and a half? A. Yes, sir.

Q. Why did you leave their employ? A. I didn't like them.

Q. You didn't like them? A. No, sir.

Q. You left voluntarily? A. Yes, sir.

Q. What did you do after that? A. I went to work for Jim McKenna's.

*Pete D. Caretto—For National Labor Relations Board—
Cross.*

Q. Who? A. Jim McKenna's.

Q. Jim McKenna? A. Leasor.

Q. Did you start to work for him immediately after you left the Shattuck lease? A. No, a couple of months. I went to work for him in '37.

Q. Did you do anything at all from the time you left the Shattuck lease up to the time you went to work for McKenna? A. No, sir.

Q. Did you endeavor to get any employment? A. No, sir.

Q. Did you apply at the Shattuck Denn? A. Yes, sir.

Q. During that period? A. Yes, sir.

Q. The Shattuck Denn Mining Company? A. Yes, sir.

Q. Why wouldn't they employ you? A. Well, they wasn't putting men on at that time.

Q. Approximately what month was it you went to work for McKenna? A. Around January or February.

Q. Of '37? A. '37.

Q. How long did you work for McKenna? A. Two months and a half.

Q. What pay did you receive there? A. Mucker's pay; \$4.40.

Q. Was McKenna paying mucker's pay of \$4.40 in January of 1937 and in March of '37? A. He was.

Q. Why did you leave there? A. The ground was too bad; didn't like the works.

Q. You didn't like to work there? A. No, sir.

Q. You left there voluntarily, did you? A. Yes, sir.

Q. Then what did you do? A. Just loafed around; went from one place to another.

Q. And you haven't worked since that time? A. No, sir.

Q. As a matter of fact, Mr. Caretto, isn't it a fact that the reason you left both of those employments was because you were drunk and couldn't go to work? A. No, sir; it is not.

*Pete D. Caretto—For National Labor Relations Board—
Cross.*

Q. It wasn't? A. No, sir.

Q. Since 1937, when you left McKenna's, you have been doing W. P. A. work? A. No, sir. I went to work for the W. P. A. on the 27th of December, '37.

Q. Of '37? A. Yes, sir.

Q. How many days a month are you working on W. P. A.? A. I work—well, last period I worked 11 days; but this period, I will work either 8 day or 9 days. We go to work on the 26th of every month.

Q. That is the commencement of the period? A. That is what we call our period.

Q. During the period from June, 1935, until the present time, have you worked for anyone else other than the persons that you have enumerated? A. Yes. I worked for a dairy down here. That was after the strike.

Q. What dairy was that? A. Roadside Dairy.

Q. When did you go to work for the Roadside Dairy? A. I couldn't tell you what date that was.

Q. How long did you work there? A. Not very long; I didn't like the hours at that place.

Q. You didn't like the hours? A. No; 2:30 until 8:00; that was too much.

Q. How much pay did you receive there? A. That was \$84.00 a month.

Q. \$84.00 a month? A. Yes, sir.

Q. Did you have your lodgings furnished? A. Lodgings furnished, but we paid our own board.

Q. You paid your own board? A. Yes.

Q. So you quit all of these places because you didn't like the work there? A. Yes.

Q. As a matter of fact, you wouldn't like to go back to work for the P. D., would you? A. No, sir.

Mr. Evans: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

*Pete D. Caretto—For National Labor Relations Board—
Redirect.*

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy.) Did I understand you to say that you would not like to go back to the Phelps Dodge Corporation? A. I didn't hear that question.

Trial Examiner Kennedy: Read the last question asked by counsel.

(The question referred to was read by the Reporter as set forth above.)

The Witness: Yes, I would like to go back to the Phelps Dodge.

Q. (By Trial Examiner Kennedy.) Have you ever studied law? A. No, sir.

Q. Have you ever studied the National Labor Relations Act? A. No, sir.

Q. You do not know, then, as a matter of law, whether you have been an employee of the Phelps Dodge Company since June, 1935, or not, do you? A. No, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Yes.

Redirect examination:

Q. (By Mr. Persinger) What was it about this Shattuck lease that you didn't like? A. Why, the track up there, it took four of us to pull a car up hill.

Q. Was there a track similar to that in the Copper Queen mine? A. No, sir.

Q. Why was it you didn't like the McKenna mine? A. Caving in all the time; no timber overhead; no lagging overhead.

Mr. Persinger: That is all.

Trial Examiner Kennedy: Anything further?

**Henry Waters—For National Labor Relations Board—
Direct.**

Recross examination:

Q. (By Mr. Evans) Mr. McKenna's leasing operations were conducted in a part of the Phelps Dodge mine, were they not? **A.** Yes, sir.

Mr. Evans: That is all.

Mr. Persinger: That is all.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

Mr. Persinger: Henry Waters.

HENRY WATERS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Henry Waters.

Direct examination:

Q. (By Mr. Persinger) Mr. Waters, were you formerly employed by the Phelps Dodge Corporation? **A.** Yes, sir.

Q. When were you first employed by them? **A.** In '27.

Q. Was that Phelps Dodge, or C. & A.? **A.** It was Phelps Dodge.

Q. And you worked how long? **A.** Well, I worked until—I was laid off in '29.

Q. You returned to work when? **A.** In '33.

Q. What month, do you remember? **A.** No, I don't.

Q. Were you employed by Phelps Dodge Corporation in the early part of June, 1935, just before the strike? **A.** Yes, sir.

Q. And at that time were you a member of the Union? **A.** Yes, sir.

*Henry Waters—For National Labor Relations Board—
Cross.*

Q. What was your job then? A. Well, I was a miner.

Q. Did you go out on strike? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. After the strike was over, did you apply for reinstatement with the company? A. I did.

Q. When? A. It was in December, '36.

Q. Why did you wait until December, '36? A. Well, the reason that the men had gone—they had been going up there and he hadn't put none of them back, and I figured it wasn't no use.

Q. In December, '36, where did you apply for work?

A. Mr. Bateman's office.

Q. Was Mr. Bateman present? A. Yes, sir.

Q. Was anyone else there? A. Not that I remember.

Q. What time of day was it? A. It was about 8:30, or 9:30.

Q. And what did you say to Mr. Bateman? A. Well, I just asked him if there was any chance for a job, and he told me "No", he couldn't do a thing for me. And he said, "You just as well go to a union camp."

Q. Have you been back since? A. No, sir.

Mr. Persinger: I offer as Board's Exhibit No. 46 the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 46.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Were you in the picket line, Mr. Waters? A. Yes, sir.

*Henry Waters—For National Labor Relations Board—
Cross.*

Q. How often? A. Well, I wasn't there regularly because I laid off, and I lived out in the valley, see, and I couldn't make it all the time.

Q. Whereabouts in the valley did you live? A. About 12 miles out in the Sulphur Springs Valley.

Q. Do you live there at the present time? A. No. I moved out there right after the strike, a few days after the strike, see? I couldn't afford to pay house rent, so I moved out.

Q. Do you have a place out there, or did you have a place out there before this, or did you buy one? A. No, I didn't buy one. I just moved out on a place out there.

Q. Are you living there at the present time? A. I am living—not in the same place, no. I have moved several times, but I am still in the same district.

Q. What was the last day you were in the picket line? A. Well, it was along about—I wouldn't say for sure. Along about the 20th.

Q. The 20th of— A. (Interrupting) Of August.

Q. (Continuing)—August, 1935? A. 1935.

Q. What date did you move out in the valley? A. It must have been about the 14th or 15th of June, right after the strike, see, just a few days.

Q. How many times a week did you drive in after that? A. Well, I will say twice.

Q. So that after that date in June you were not on the picket line but twice? A. Well, I wouldn't say for sure. Sometimes I might have been on three times a week.

Q. Oh, you drove in two or three times a week during that period? A. Yes.

Q. Just to see how it was going along? A. Yes, to be on the picket line.

Q. What were you doing out there in the valley? A. Working on relief.

*Henry Waters—For National Labor Relations Board—
Cross.*

Q. And were you on relief all during that period? A. Yes, sir, I have been on relief ever since the strike.

Q. Have you ever had any employment other than relief since June 10, 1935? A. No, sir.

Q. Have you ever applied for employment at the Shattuck Denn Mining Company? A. I sure have, yes, sir.

Q. How many times? A. Once.

Q. When was that? A. I couldn't say for sure.

Q. What year? A. I couldn't say—'37.

Q. Were they hiring at that time? A. Yes, sir.

Q. Were you rejected? A. I was hired and turned down on an x-ray.

Q. Bad lungs? A. Yes, sir.

Q. Have you silicosis at the present time? A. That is what they told me, that is what they say I have.

Q. You say that you didn't apply to Mr. Bateman until December, 1936, is that correct? A. No, sir.

Q. From the time that the picket line left off, which was, I think you testified, August of 1935, how often did you come to town? A. After the strike was called off?

Q. Yes. A. Well, no more than I had to, because I wasn't able.

Q. Well, I just mean approximately how many times a month? A. A month?

Q. Yes. A. Oh, I would say twice or three times.

Q. Two or three times a month? A. Yes, sir.

Q. Did you used to come in during the day? A. Yes, sir.

Q. Did you always have an opportunity to see members of the union at that time? A. Yes, I had met them, some of them, yes, sir. I came in to some of the meetings.

Q. You never thought to go up and—were you in Lowell at any time on those visits? A. In Lowell?

Q. Yes. A. Yes, sir.

*Henry Waters—For National Labor Relations Board—
Redirect.*

Q. What made you finally decide to go up and see Mr. Bateman in December, 1936? A. Well, I figured he wasn't putting none of the men back, they had, none of them, gotten reinstated back, so I figured there wasn't no use, and it was a little while before Christmas and I figured if I could get a check in before Christmas it would be mighty nice.

Q. But you never bothered to go in before then? A. No, sir.

Q. Was there any reason that you were rejected at the Shattuck Denn? A. That is all. They said I couldn't pass the x-ray on my lungs.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) You were employed as a miner in June, '35? A. Yes, sir.

Q. At what rate of pay? A. \$5.

Q. Do you want your old job back? A. Yes, sir, I would like it.

Q. Do you think your physical condition will permit your working on that job? A. No, I don't think so.

Q. You do not think so? A. Not from what the x-ray shows.

Q. Do you know of any other position in the mine that you can fill? A. Not inside, no, sir. They all have to take that, see, you have to go underground.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Persinger) Are there any jobs above ground that you could fill in the mine? A. Well, I have never had no experience on top.

P. C. Lytle—For National Labor Relations Board—Direct.

Mr. Persinger: I have nothing else.

Trial Examiner Kennedy: Anything further?

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

P. C. LYTLE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: P. C. Lytle.

Mr. Kitchel: Mr. Examiner, could we have about a five-minute recess before we start with this witness?

Trial Examiner Kennedy: Yes, we will take a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Direct examination:

Q. (By Mr. Persinger) Mr. Lytle, were you formerly employed by the Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed? A. Well, I started to work for the C. & A. Company in 1927, and was there when they merged.

Q. And following the merger how long did you continue to work for the Phelps Dodge? A. Up until June, 1935.

Q. Until the time of the strike? A. Yes, sir.

Q. What was your first job in June, 1935? A. Well, I was repairman.

Q. What was your rate of pay? A. \$5.24.

Q. Did you go out on strike? A. I did.

P. C. Lytle—For National Labor Relations Board—Direct.

Q. Were you on the picket line? A. No, sir.

Q. At no time? A. No.

Q. Following the strike did you ever apply for reinstatement with the company? A. Following the strike?

Q. After the strike was over. A. Yes, sir.

Q. To whom did you apply? A. Mr. Henrie.

Q. Where did you see Mr. Henrie? A. In the general office.

Q. Do you remember when that was? A. Well, it was either in September or October, '35.

Q. What time of day was it? A. About 5:00 o'clock in the evening.

Q. Was anyone present? A. No, sir.

Q. And did—what did you say to Mr. Henrie? A. Well, when I got in to see him he asked me what he could do for me, and I said, "What's the chance to go to work?"

And he said, "You was sick along about the first of that strike, wasn't you, Dave?"

And I said, "Yes, I was sick," I said, "I went to the hospital every day that week until Saturday."

I said, "They took a picture along in the middle of the week." And I said, "I went in to see the result of the picture," and I said, "When I went in Saturday morning, why, Dr. Hunt told me that they couldn't furnish me any more medical attention."

Q. That was after the strike had started? A. Yes, and I asked him, "Why?" And he said, "Well, they had orders from the office." And Pat said that "Did he tell you that?" And I said, "Yes, he told me that."

And he said, "Well, Dave, you come back in tomorrow evening and I will give you an answer."

So I went back the following evening and I didn't get to see him, but the next evening I seen him.

Q. Where did you see him that evening? A. In the general office.

Q. What time of day was it? A. About 5:00 o'clock, or possibly a little after.

P. C. Lytle—For National Labor Relations Board—Cross.

Q. Was anyone else present? A. No, sir.

Q. What was said on that occasion? A. When I went in I said, "Well, Pat, what's the verdict?"

And he said, "Well, Dave," he said, "I'm sorry, but I can't do anything for you."

I said, "Well, Pat, that means that I'll never work here again!"

And he said, "Oh, no, no. Don't take it that way."

Q. Was anything further said at that time? A. He told me, he said, "Now, Dave," he said, "personally I'll help you."

He said, "If you know of any place that you can go to work and I can be of any assistance to you, don't be afraid to refer to me," he said, "because I'll help you."

Q. And was that the end of that conversation? A. That was the end of it.

Q. Since that time have you ever re-applied for work?

A. No.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 47 the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 47.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Evans) Have you been employed since June 10, 1935? A. Yes.

Q. When was the first time? A. Different times.

Q. When was the first time you received employment after that date? A. In January, '36.

Q. Where and by whom? A. At Hillside, Arizona; Hillside Mining Company.

P. C. Lytle—For National Labor Relations Board—Cross.

Q. What kind of work did you hire on for? A. Well, I started there as a miner, and was promoted—went on as a repairman after later.

Q. And what rate of pay did you get there as a miner? A. \$4.

Q. How long did you work at the \$4 rate? A. About five and a half months.

Q. How many days a week? A. Seven days a week.

Q. And then you went on as a repairman? A. Yes.

Q. What did you receive as a repairman? A. Four and a half.

Q. How long after that did you work as a repairman? A. About three and a half months.

Q. Seven days a week? A. Yes.

Q. When did you leave the employ of the Hillside Mining Company? A. When?

Q. Yes. A. In November, 1936.

Q. You left there voluntarily, did you? A. Yes, sir.

Q. Where is the Hillside Mining Company located? A. At Hillside—about 35 miles outside of Hillside in Yavapai County.

Q. Do you know whether or not that company is still operating? A. Well, I don't know. I understand that someone took a leasing bond on it. I don't know whether they have or not.

Q. They were operating at the time you left? A. Oh, yes.

Q. What did you do after November, 1936, when you left the Hillside? A. I didn't work no more until I went to work at the Shattuck in February in '37.

Q. What job did you have when you went to the Shattuck lease? A. Well, I went up mining.

Q. You hired on as a miner? A. Yes.

Q. What rate of pay did you receive? A. Well, I received \$5.48 when I started there, and then in a short time they raised it to \$5.60. I think I worked one period—I started on the 15th of February, if I remember correctly,

P. C. Lytle—For National Labor Relations Board—Cross.

and worked until the 1st day of March at \$5.48, and then they raised the wages there to \$5.60. I think I worked four days at \$5.60 and was put on as a shift boss, and I got \$6.60 then for up, I think, until about the 1st of June, and then I got a raise to \$7.50, and was laid off the 19th day of June.

Q. You were laid off from the Shattuck lease? A. Yes. There was 37 men laid off on one day.

Q. What? A. There were 37 men laid off when I was laid off.

Q. That was in June? A. '37.

Q. What date in June? A. The 19th of June, in '37.

Q. That was due to reduction in force? A. Yes.

Q. Then what did you do? A. Well, not much of anything. I tried to find a job. That was the hardest thing I had to do.

Q. When was the next job you found? A. I went to Idaho. I worked for six weeks in Idaho.

Q. For whom did you work there? A. I worked for the Sullivan Mining Company.

Q. Bunker Hill & Sullivan? A. No, the Sullivan. It was at the Star Mine.

Q. What job did you have with them? A. I was a timber man.

Q. When did you go to work for them? A. About the 1st of September.

Q. 1937? A. Yes.

Q. What rate of pay did you receive as a timber man? A. \$6.25.

Q. \$6.25? A. Yes.

Q. How many days a week did you work? A. Six days.

Q. And then you worked there for about six weeks? A. Yes. I got hurt there on the 14th day of October.

Q. Did you receive workmen's compensation after that? A. Yes.

Q. You were injured while in the employ of the Sullivan Company? A. Yes.

P. C. Lytle—For National Labor Relations Board—Cross.

Q. How long after that did you receive compensation?

A. Two weeks.

Q. Did you attempt to go back to work there? A. No.

Q. You left there after that? A. Yes.

Q. Voluntarily? A. Yes.

Q. You had your job available if you wanted to go back to it? A. Well, I was told not.

Q. Did you apply for reinstatement? A. No.

Q. Is it customary when a man is injured that he then is off the payroll? A. There they have a bonus system. If they have no lost-time accident in a month, he receives \$25; and if they have a lost-time accident, that is taken off them and they don't usually go back to work when they have a lost-time accident there.

Q. Well, you never applied for re-employment after your accident? A. No.

Q. You never made any attempt to make—— A. The doctor advised me to get away from it.

Q. Just a minute. You never made any attempt to go back to work there? A. No.

Q. When was it you left Idaho? A. I left Idaho the last day of October, I think.

Q. Then where did you go? A. I came home.

Q. What did you do after that? A. Nothing. I worked on the W. P. A. here. I was on W. P. A.

Q. You haven't worked for anyone else since then? A. No.

Q. Are you working for anyone at the present time? A. What?

Q. Are you working for anyone at the present time?

A. W. P. A.

Q. Have you given me the names of all the persons for whom you have worked since June 10, 1935? A. No. I worked eight days at Bagdad, Arizona.

Q. For the Bagdad Copper Company? A. Yes.

Q. That is also in Yavapai County, is it not? A. Yes, sir.

P. C. Lytle—For National Labor Relations Board—Cross.

Q. When was that? A. That was in January, '37.

Q. That is after you left the Sullivan—oh, no. A. No. That was after I went—I went back up to Hillside after I quit there, and they had no material. The trucks couldn't go in and out with the concentrates and there was nothing to work with, and so I went over to Bagdad and worked eight days there.

Q. What did you work there as? A. Timber man.

Q. And you left there voluntarily, did you? A. Yes.

Q. How much pay did you receive while you were there?

A. Four forty.

Q. How many days a week did they work there? A. I think they worked six days a week. They didn't work on Sundays.

Q. Is that all of the names of the persons for whom you worked? A. That's all.

Q. Do you know John Wrigley? A. John Wrigley?

Q. Yes. Did you work for him? A. Yes, but I received no pay.

Q. How long did you work for him? A. I don't know. I was down there about 10 days, I guess; maybe two weeks.

Q. That is in Lowell? A. Yes.

Q. Were you discharged? A. No, I wasn't discharged. I quit.

Q. You left voluntarily? A. Yes.

Q. Why did you leave? A. Because there was no money in it.

Q. You didn't receive any pay while you were there at all? A. No, sir.

Q. And you say that you were not discharged by Wrigley? A. No.

Q. Did you ever attempt to recover any pay from Wrigley? A. I recovered the money I put in there.

Q. Were you a partner in the business? A. I had \$600 in the business.

Q. You got that out? A. Yes.

P. C. Lytle—For National Labor Relations Board—Cross.

Q. And then you weren't employed by Wrigley? A. No.

Q. Were you an officer of the union in 1935, Mr. Lytle?

A. Yes.

Q. What was your position? A. Vice-President,—no, '35?

Q. Yes. A. No, sir; I was not, until after the strike, I was after the strike.

Q. Are you an officer at the present time? A. No, sir.

Q. You were an officer during a certain period of time, is that it? A. Yes.

Q. After the strike? A. Yes.

Q. Are you a member of the union at the present time? A. No, sir.

Q. You are not a member of the union at the present time? A. No, sir.

Q. How long has it been since you have been a member of the union? A. A year.

Q. Do you have any of the records of the union in your possession? A. No, I have not.

Q. You have no records of the meeting of the union on June 7th or June 8th, 1935? A. I have no records of the union.

Q. Were you Secretary of the union in August of 1935? A. No, sir.

Q. Did you at any time have any record of meetings of the union of June 7th or June 8th, 1935? A. No time.

Mr. Evans: No further questions.

Mr. Persinger: No questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) When did you join the union? A. September 16, 1933, here—this local.

Q. And you were in good standing during the strike? A. Yes, sir.

Jesse Edge—For National Labor Relations Board—Direct.

Q. Do you want your old job back at Phelps Dodge? A. I certainly do.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Edge.

JESSE EDGE, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Your full name, please?

The Witness: Jesse Edge.

Direct examination:

Q. (By Mr. Persinger) Mr. Edge, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed by them? A. In 1929, in July.

Q. You worked for them for how long? A. Until June 10th, when the strike was called.

Q. You worked straight through from 1929 to the time of the strike? A. With the exception of a time or two off in a week or two.

Q. I cannot understand you.

Trial Examiner Kennedy: Speak out louder.

The Witness: With the exception of one time—one vacation I took. That was all. I worked straight through.

Q. (By Mr. Persinger) In June, 1935, what was your job? A. Motorman.

Jesse Edge—For National Labor Relations Board—Direct.

Q. What was your rate of pay? A. \$5.24.

Q. At the time of the strike were you a member of the union? A. Yes, sir.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. Yes.

Q. What was the last day that you were on the picket line? A. About August 15th.

Q. After the strike was over did you apply to the company for work? A. No.

Q. Why not? A. Bateman had already told me that I could never work for the company again.

Q. When did he tell you that? A. At about June 22nd, when I went in after my pay slip to get my pay—a little statement; I guess they call them the "pay slip."

Q. That was in Mr. Bateman's office? A. Yes.

Q. Was anyone else present? A. Not in his office, no.

Q. What time of day was it? A. I would say it was sometime in the morning, likely about 10:00 o'clock.

Q. What did you say when you walked into the office? A. I told him what I came after.

Q. What did he say? A. He asked me why I didn't go back to work, why I didn't go back on the job.

Q. What did you say? A. I told him I was out on a strike.

Q. What was the rest of the conversation? A. He told me, if I didn't go back then I would never work for the company again.

Q. Was anything further said at that time? A. No. I would take my chances on that.

Q. As a result of that conversation you have never applied for work? A. I didn't go back to apply for work. He told me it would be no use.

Mr. Persinger: I offer in evidence as Board's Exhibit No. 48 the employment record of this witness.

Mr. Kitchel: No objection.

Jesse Edge—For National Labor Relations Board—Cross.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 48.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Are you employed at the present time, Mr. Edge? **A.** Yes, sir.

Q. For whom are you working? **A.** Shattuck Denn Mining Company.

Q. What is your job with the Shattuck Denn? **A.** Miner.

Q. What is your present rate of pay? **A.** \$5.48.

Q. \$5.48? **A.** Yes, sir.

Q. How many days a week are you working now? **A.** Six days.

Q. When did you first go to work for the Shattuck Denn? **A.** July 23rd of this year—I mean of last year.

Q. In 1937? **A.** 1937.

Q. And were you hired as a miner? **A.** Yes.

Q. What was your rate of pay at the time of the strike? **A.** \$6.24.

Q. Did your rate ever exceed that any time while you were working for them? **A.** No.

Q. Have you been employed continuously by the Shattuck Denn from July, 1937, to date? **A.** I have, yes.

Q. How did it happen that you did not picket after August 15th? **A.** I was working on the E. R. A.—that is the relief, and I had my time to put in out there, and it just so happened I wasn't on the picket line out there the last few days.

Q. Whereabouts were you working on the E. R. A.? **A.** In the Sulphur Springs Valley, that is about 20 miles out.

Q. How long did you stay on that? **A.** Until the W. P. A. set-up came on and I was on that until in 1935—I mean '36.

Q. May of 1936? **A.** Yes.

Jesse Edge—For National Labor Relations Board—Cross.

Q. Then were you on relief continuously from August, 1935, to May of 1936? A. With the exception of two weeks, I worked on the streets in Lowell for the Tempe Stone Company. It was a short job and I got two weeks' work there.

Q. Do you mean the Phoenix-Tempe Stone Company?

A. Yes, I worked two weeks there.

Q. How much were you paid by them per day? A. \$4 a day.

Q. And you worked how many days in that two weeks' period? A. About 11 days I worked for them.

Q. Did you have any other employment other than relief work up to May, 1936? A. No.

Q. After May, 1936, did you obtain any employment? A. No.

Q. Did you continue on relief? A. No, I was out of the state for a while looking for work and I came back and went back on the relief.

Q. When did you leave the state? A. About May 28th.

Q. 1936? A. 1936.

Q. Where did you go, Mr. Edge? A. I was in New Mexico, Colorado, Wyoming.

Q. Were you seeking employment at that time? A. I was seeking employment, yes, at that time.

Q. When did you return? A. September of '36—September.

Q. And you received no work during that period of time? A. No work, no.

Q. When you returned in September, 1936, did you obtain employment? A. I went back on the W. P. A.

Q. And how long did you stay on W. P. A.? A. Until I got a job at the Denn, in July.

Q. Of 1937? A. Of '37, yes.

Q. When did you first apply for employment with the Shattuck Denn? A. About the 1st of June, I would say, when I started rustling there.

Q. You never made application to the Phelps Dodge? A. No.

Jesse Edge—For National Labor Relations Board—Cross.

Q. Then you have been working continuously at the Shattuck Denn Mining Company since July 23, 1937? A. I have.

Q. Where were you working at the time that you walked out in June of 1935, what shaft? A. Junction.

Q. Were you ever employed by the Shattuck Denn Mining Company at any time prior to July 23, 1937? A. No.

Q. Was June the first time you ever applied for employment there? A. Yes, June.

Q. June of '37? A. About June—about June, somewhere around there when I first made application at the Denn.

Q. How long a period, to your knowledge, had the Shattuck Denn been hiring men during the year 1937? A. I couldn't tell you.

Q. Were they hiring earlier that year? A. I believe they were. I know some of the boys did go on before that.

Q. But you didn't make any application, make any attempt to get work there? A. No.

Mr. Kitchel: That is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What is your present position? What job are you holding down at the Shattuck Denn? A. Miner.

Q. And you were a motorman at the Phelps Dodge, is that right? A. Yes.

Q. You are now getting \$5.48 at the present job? A. Yes.

Q. Do you want your old job back at Phelps Dodge? A. Well, at the present rate they pay the motorman, I would prefer the job at the Phelps Dodge.

Herschel J. Montgomery—For National Labor Relations Board—Direct.

Q. If you had to go back at \$5.24, would you take that in preference to what you have got now? A. I would not.

Q. When did you join the union? A. In 1934, I believe it was.

Q. And you continued your membership up to the time of the strike? A. Yes.

Q. And through the strike? A. Yes.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

HERSCHEL J. MONTGOMERY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Herschel J. Montgomery.

Direct examination:

Q. (By Mr. Persinger) Mr. Montgomery, do you know when the C. & A. and the Phelps Dodge merged? A. I don't know the exact year that was. About '30, I think. Around in there some place.

Q. Where were you working at that time? A. At the concentrator.

Q. That was owned and operated by what company? A. Phelps Dodge.

Q. And since that time how long have you worked for Phelps Dodge? A. Ever since that time, up until the time of the strike.

*Herschel J. Montgomery—For National Labor Relations
Board—Direct.*

Q. When did you originally go to work for Phelps Dodge? A. In 1909.

Q. You worked off and on from that time up until the merger? A. I worked from 1909 when I started—

Q. Just a moment, Mr. Montgomery. There is no use going into details. A. There was an interval there.

Q. What is that? A. There is an interval there. I worked some—from 1909 until '10, March, '10, and then I went back east. I came back here again in '15 and I worked all the time then for the Phelps Dodge, with the exception of about six months that I worked for the Shattuck office during the war.

Q. Were you employed by the company in June, 1935? A. I was.

Q. At that time were you a member of the union? A. Yes, sir.

Q. What was your job at that time? A. I was repairing cars in the boiler shop.

Q. What was your rate of pay? A. \$5.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. I was.

Q. What was the last day you were on the picket line? A. Well, I don't know the exact day. It was about two weeks, or something like that, before they pulled the strike off.

Q. Since the strike, have you ever applied for reinstatement with the company? A. Yes, sir.

Q. When was the first time? A. About September of '35, the first part.

Q. To whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. In his office.

Q. Was anyone else present? A. No, I don't think there was.

Q. What time of day was that? A. Well, I would say between 10:00 and 11:00, around in there some place.

Q. In the morning? A. Yes, sir.

Herschel J. Montgomery—For National Labor Relations Board—Direct.

Q. And what was said? A. He told me there was nothing doing; that I needn't come back, he didn't need anybody at that time.

Q. That was all that was said? A. That was all that was said at that time.

Q. Have you applied since? A. Yes, sir, I have applied off and on up until, oh, about September, '36.

Q. To whom have you applied off and on? A. Mr. Bateman and also Mr. Henrie.

Q. Did Mr. Bateman ever give you any encouragement, say you might get on later? A. Well, they kind of passed me back and forth from one to the other up until September of '36, and Mr. Bateman told me that the books was closed as far as I was concerned.

Q. Where did you see Mr. Bateman at that time? A. In his office.

Q. And what time of day was it? A. Well, about the usual time, between 10:00 and 11:00; I generally went in there in the mornings.

Q. Was anyone else present at that time? A. I don't think so.

Q. What was said on that occasion? A. Well, that was about all they told me. When I went in for work he says, "As far as you are concerned, the books are closed."

Q. That was all that was said? A. Yes.

Q. Have you applied since? A. No.

Mr. Persinger: I offer in evidence as Board's Exhibit 49 the employment record of this witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 49.)

Mr. Persinger: Take the witness.

*Herschel J. Montgomery—For National Labor Relations
Board—Cross.*

Cross examination:

Q. (By Mr. Evans) Mr. Montgomery, you were first employed at the Copper Queen about May 12, 1909, were you not? A. I don't remember. It was around about May, somewhere about there.

Q. And then you worked until February, 1910? A. Well, I went home in March. That is the reason I remember it.

Q. And then you quit and went home? A. I quit at that time.

Q. And you came back in '17? A. I came back in '15.

Q. When did you first go to work for the company after that? A. June, '15.

Q. Are you sure about that? A. About the middle of June in '15.

Q. Are you sure it wasn't July, '17? A. No, sir; it was '15.

Q. And you worked until June, 1918, when you were discharged? A. No, I went to work in '15, and then, as I say, there was an interval of about six months I worked in the Shattuck office, that was in '17, during the war.

Q. Oh, you worked for the Shattuck Denn? A. Yes, about six months during '17.

Q. You left the employment of the P. D., and then went to work for the Shattuck? A. Yes, for about six months.

Q. And then you went back in '18? A. I went back to the P. D.

Q. And about June, 1918, you were discharged, were you not? A. I don't remember the date.

Q. You were discharged some time in 1918? A. I had—yes, I have had some discharge slips.

Q. Well, I am asking you whether you weren't discharged about the middle of 1918? A. I don't remember the date. I was handed two or three of those discharge slips.

Q. You left the employ of the company at that time? A. I was only off for a few days.

Herschel J. Montgomery—For National Labor Relations Board—Cross.

Q. Then you didn't go back to work until October of 1918, did you? A. When was that you said I was handed that slip?

Q. June of 1918. A. And I didn't go back until October?

Q. That is right. A. Now, maybe that was at the time I was at the Shattuck office. No, it was during the war. No, I was never discharged that long.

Q. And isn't it true—A. (Interrupting) My discharges never lasted only a few days at a time.

Q. Isn't it true that in February, '21, you were again discharged? A. I don't think so.

Q. You don't think so? A. No, sir.

Q. And weren't you—you were employed as a watchman in 1931 and '32, were you not? A. Yes, I was watching all the time of the depression.

Q. And you were transferred then to the job of boiler-maker's helper in 1933, were you not? A. Well, when they started to pick up, I was.

Q. And prior to that time you had been warned several times about leaving your job as watchman and going over to Warren and doing work around your house, had you not? A. No, sir, I had not. I had permission to go over there.

Q. And wasn't the reason you were transferred to boiler-maker's helper, because you weren't taking care of your duties as a watchman? A. No, sir, it was not.

Q. It was not? A. No, sir.

Q. You say you were never warned about leaving your job as watchman and going over to Warren? A. The Chief Watchman gave me permission to go over to Warren and put in that pipeline.

Q. Did he give you permission every time you went to Warren? A. He told me to go over and water my place and put in the pipeline while I was watering.

Q. Who was it told you that? A. Frank Salmon.

Herschel J. Montgomery—For National Labor Relations Board—Cross.

Q. As a matter of fact, you were in the habit of going over there during the day, were you not? A. I would go over there when the shift was going off.

Q. You would never go over there in the morning? A. I didn't go down in the morning.

Q. You wouldn't go over there until the afternoon? A. The afternoon, after 3:00 o'clock.

Q. Then you were discharged again on July 3, 1934, were you not? A. No, sir,—Ch, yes, for Union activities.

Q. On the job? A. On the job.

Q. And then you were re-hired on July 20, 1934? A. Now, in July, I went back to work; I was reinstated, not re-hired, reinstated.

Q. You were discharged in July of 1934, were you not, Mr. Montgomery? A. I was given that blank, but I didn't draw my time.

Q. Nevertheless, you were discharged? A. I was reinstated.

Q. Well, you understood, Mr. Montgomery, in July of 1934 you were discharged, were you not? A. Yes.

Q. Then, after your case was taken up with the management, you were re-hired, or reinstated, either way? A. Put back to work.

Q. And at that time Mr. Henrie told you that that was your last chance with the company, did he not? A. I don't remember Mr. Henrie saying anything of the kind.

Q. Have you been employed at all since June, 1935? A. Been on the WPA.

Q. Continuously? A. Well, outside of about three or four weeks, I worked for Casson.

Q. That is on the bridge job at Douglas? A. Yes.

Q. When did you go to work for Casson? A. That was in, I think, July, '36.

Q. And how long did you work for him? A. Three or four weeks.

Herschel J. Montgomery—For National Labor Relations Board—Cross.

Q. What rate of pay did you receive? A. \$8.00.

Q. A day? A. A day.

Q. How many days a week? A. 5.

Q. Did you leave that employment voluntarily? A. No.

Q. How did you happen to leave there? A. Because they laid off a bunch of men. Had no work for them, no place for them.

Q. Now, between June, 1935, and the time you went to work for Casson, were you employed? A. On the WPA.

Q. No other employment except for the WPA work?

A. No.

Q. How many days a week were you working—or, rather, a month, did you work on the WPA job? A. Well, at first they was giving us \$16.00 a month for single fellows, and then we had to work that out, and then they changed it to \$50.00 a month, and then \$68.00 a month.

Q. That was between the time you left the employ of the Phelps Dodge and the time you went to work for Casson? A. Yes.

Q. Now, did you work at all after you left the employ of Casson? A. Well, I have had jobs a few days at a time, is all; just temporary.

Q. Who was the first person you worked for after you left Casson's employ? A. Let's see. I think it was Leonard, over in Tucson. I worked three or four days for him.

Q. What kind of work was he doing? A. Carpenter work.

Q. You only worked three or four days for him? A. Yes.

Q. About when was that, about what time? A. Let's see. That was in '36, too, I think.

Q. And then who did you work for? A. Nobody.

Q. You haven't worked for anybody since then? A. Well, I had a little painting job down at Warren.

Q. How long did that last? A. Oh, that was just for Dr. Lumvaugh, painting a couple of rooms for him.

Herschel J. Montgomery—For National Labor Relations Board—Redirect.

Q. Have you been on WPA work since that time? A. Yes.

Q. How many days a month? A. 11.

Q. And you are making about how much a month? A. \$44.00.

Q. \$44.00 a month? A. Yes, sir.

Q. You have been earning, then, \$44.00 a month practically continuously since you left Casson's employment; is that right? A. Yes.

Q. You are not working at the present time? A. No, WPA.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Redirect examination:

Q. (By Mr. Persinger) Mr. Montgomery, do you have a pocketbook? A. I have.

Q. May I see it? A. The paper is inside.

Mr. Persinger: I will read into the record what appears to be printed in gold leaf—

Mr. Evans: If the Court please, we object to anything being read into the record until it has been introduced in evidence or marked for identification in some manner.

Mr. Persinger: I cannot very well introduce the pocketbook in evidence, Mr. Examiner.

Trial Examiner Kennedy: What is it? What is the point?

Mr. Persinger: That is why I want to read it.

Mr. Kitchel: Show it to the Examiner.

(The document referred to was passed to the Examiner.)

The Witness: The paper is inside, Mr. Examiner. You can take that blue paper out and read it.

Herschel J. Montgomery—For National Labor Relations Board—Redirect.

Trial Examiner Kennedy: Is there any objection to that being read into the record?

Mr. Evans: Yes. We object to it upon the ground we do not know when that was presented to Mr. Montgomery.

Mr. Persinger: Well, then, in order to lay a foundation, I will show counsel the letter, which is on the letterhead of Phelps Dodge Corporation, dated May 10, 1935. Apparently the signature is mimeographed, but I am not sure of that. It seems to be more or less a form letter.

Mr. Evans: Why don't you introduce the letter in evidence?

Mr. Persinger: Well, I am going to.

Mr. Evans: We object upon the grounds it is incompetent, irrelevant and immaterial.

Mr. Persinger: I think it has some bearing on the cross-examination of counsel.

Trial Examiner Kennedy: Ask him to identify it.

Q. (By Mr. Persinger) Did you receive that letter? A. I did.

Q. At the time you received this letter, did you receive this billfold or pocketbook? A. They came together.

Q. If you know, is that a more or less customary reward from the company? A. They pass them out to anybody with 10 years' continuous service without a lost time accident.

Mr. Persinger: I will offer the letter as Board's Exhibit No. 50, and I wish to read into the record the inscription on the billfold.

Trial Examiner Kennedy: Is there any objection to the letter?

Mr. Evans: No, we have no objection to the letter.

Trial Examiner Kennedy: The letter may be received in evidence as Board's Exhibit No. 50.

Herchel J. Montgomery—For National Labor Relations Board—Recross.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 50.)

Trial Examiner Kennedy: You may read the inscription on the billfold.

Mr. Persinger: "Presented by the Phelps Dodge Corporation, Copper Queen Branch, Mines Division, to Mr. H. J. Montgomery, in recognition of 10 years' service without a lost time accident."

Nothing further.

Trial Examiner Kennedy: Any further questions?

Recross examination:

Q. (By Mr. Evans) I believe you stated, Mr. Montgomery, that it was the general practice of the company to present such letters and billfolds to any employees— A. 10 years continuous service.

Q. Just a minute. Let me complete my question, please.

(Continuing)—who have completed 10 years' service with the company without a lost time accident? A. Yes, 10 years' continuous service without a lost time accident.

Mr. Evans: That is all.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Do you want your old job back at Phelps Dodge?

The Witness: Yes, sir.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Witness excused.

(Witness excused.)

Mr. Persinger: Mr. Morris.

If the Examiner please, it has been stipulated that this letter, marked Board's Exhibit No. 50, may be withdrawn, because the witness would like to keep it.

Mr. Montgomery: If you need that, keep it. I can do without it.

J. M. Morris—For National Labor Relations Board—Direct.

Trial Examiner Kennedy: Do you want to withdraw it, or leave it in?

Mr. Persinger: I think the inscription on the billfold is sufficient.

Trial Examiner Kennedy: Very well. It may be withdrawn.

J. M. MORRIS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: Will you state your name, please?

The Witness: J. M. Morris.

Direct examination:

Q. (By Mr. Persinger) Mr. Morris, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed? A. I was employed—I was already working at the mines when the merger took place.

Q. You were employed first at the C. & A.? A. Yes, sir.

Q. When did you go to work for the C. & A.? A. In June, '26.

Q. And you were employed at the time of the merger with Phelps Dodge? A. Yes, sir.

Q. Were you laid off at the time of the merger? A. No, sir.

Q. You continued to work for Phelps Dodge? A. Yes, sir.

Q. When did you cease working for Phelps Dodge? A. June 10th.

Trial Examiner Kennedy: A little louder, please.

The Witness: June 10, '35.

J. M. Morris—For National Labor Relations Board—Direct.

Q. (By Mr. Persinger) That was the time of the strike?

A. Yes, sir.

Q. In June, '35, what job did you have? A. Powderman.

Mr. Kitchel: A little louder, please.

The Witness: Powderman.

Q. (By Mr. Persinger) What was the rate of pay? A. \$5.00 a day.

Trial Examiner Kennedy: How much?

The Witness: \$5.00.

Trial Examiner Kennedy: \$5.00.

Q. (By Mr. Persinger) Did you go out on strike? A. Yes, sir.

Q. At that time were you a member of the Union? A. Yes, sir.

Q. Were you on the picket line? A. Yes, sir.

Q. What was the last day you were on the picket line, approximately? A. I was on the picket line every day for about two weeks.

Q. Were you on at all after that? A. No, no; not after that.

Q. And after the strike was called off did you apply for work? A. Yes, sir.

Q. When was that? A. I didn't understand the question, please.

Trial Examiner Kennedy: Read the question.

(The question referred to was read by the Reporter as set forth above.)

The Witness: About the 1st of October, '35.

Q. (By Mr. Persinger) To whom did you apply? A. Mr. Bateman.

Q. Where did you see him? A. At his office.

Q. What time of day? A. Right after noon; just after noon.

J. M. Morris—For National Labor Relations Board—Cross.

Q. Was anyone else present? A. Not that I seen; no, sir.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance of going back to work.

Q. What did Mr. Bateman say? A. He asked me when I worked for the company—asked me my name and when I worked for the company, and when I last worked for them, and told me, "Nothing doing".

Q. Was anything further said at that time? A. I beg your pardon.

Q. Was anything further said at that time? A. Nothing.

Q. Since that time have you applied for work with the company? A. Not since about the first of October.

Q. That's the only time? A. That's the only time.

Mr. Persinger: I offer as Board's Exhibit No. 51, the employment record of the witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document referred to was received in evidence and marked as Board's Exhibit No. 51.)

Mr. Persinger: Take the witness.

Cross examination:

Q. (By Mr. Kitchel) Mr. Morris, how long were you a member of the Union? A. From the time it was organized here in Bisbee; I don't remember the date.

Q. Did you ever hold any office in the Union? A. No, sir.

Q. Are you a member of the Union at the present time? A. Yes, sir.

Q. An active member? A. Well, I wouldn't say an active member, no.

J. M. Morris—For National Labor Relations Board—Cross.

Q. Are you a paid-up member? A. Yes, in good standing.

Q. You say that when you saw Mr. Bateman, that was around the first of October, 1935? A. Yes, sir.

Q. And he asked who you were? A. Yes. He asked me my name.

Q. How long you had worked for the company? A. About that, yes.

Q. Mr. Bateman did not know you or recognize you? A. No. He asked me my name.

Q. Where were you working at the time that you went out on strike; what shaft? A. Campbell shaft.

Q. Have you been in the district the entire time since October, 1935? A. Yes, sir.

Q. Have you been employed at any time during that period? A. Nothing except relief work.

Q. You have never made an application for employment since October 1, 1935? A. No, sir.

Q. Have you ever made application at the Shattuck Denn? A. Yes, sir.

Q. Have you been rejected? A. Yes, sir. They gave me a job and the doctor turned me down.

Q. What was the reason that the doctor turned you down? A. I don't know.

Q. Did you ever ask? A. I went to see the doctor and he was not in his office, and I never went back any more.

Q. When was that? A. Oh, it was something over a year ago. I don't remember the date; something over a year ago.

Q. Did you ever go back again and apply for employment there? A. No, sir.

Q. Did you feel that you could not pass the physical examination? A. Yes. They turned me down once, and I figured that he would do the same thing again.

Q. You say that you were in the picket line regularly for about two weeks after you walked out, which was June 10, 1935. Is that correct? A. That's right.

J. M. Morris—For National Labor Relations Board—Cross.

Q. So that you did not picket, then, after June 25, 1935?

A. No. I was taken off the picket line by our local officials, and put in strike headquarters.

Q. Were you working on relief at that time? A. Yes, sir.

Q. Have you been employed by anybody since June 10, 1935? I mean, have you been employed by anybody other than the relief work? A. I have had 6 days' work with the Highway Department since then, and I have managed to get just a very small job once in a while.

Q. How long would they last, a day or so? A. A couple of days. I worked for the Shell Oil Company, oh, possibly ten days.

Q. When was that? A. Last summertime.

Q. The summer of '35? A. No, this last summer.

Q. This last summer. When did you work for the Highway Department? A. That was last September; some time in September.

Q. Have you been examined by a doctor recently? A. No, sir.

Mr. Kitchel: That is all, I think.

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: Will you take your old job back if it is offered to you, at Phelps Dodge?

The Witness: I would.

Trial Examiner Kennedy: Do you feel your physical condition would permit you to handle that work?

The Witness: I think it would; yes, sir.

Trial Examiner Kennedy: That is all. Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Mr. Guess.

*Leonard Guess—For National Labor Relations Board—
Direct.*

LEONARD GUESS, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is the name, please?

The Witness: Leonard Guess.

Direct examination:

Q. (By Mr. Persinger) Mr. Guess, were you formerly employed by Phelps Dodge Corporation? A. Yes, sir.

Q. When were you first employed by them? A. I couldn't give the exact date. I worked—Well, I worked for the Phelps Dodge since the merger.

Q. Had you worked for the C. & A. before that? A. Yes, sir.

Q. About how long had you worked prior to the merger?

A. I couldn't say for sure; about '26, '27.

Q. After the merger, how long did you continue to work?

A. Until January 14, 1935.

Q. Until January 14, 1935? A. Yes, sir.

Q. Why did you leave the company on January 14, 1935?

A. I bought a restaurant down at Douglas,—a half interest.

Q. Speak a little louder, so the Reporter can get it. A. I bought a half interest in a restaurant in Douglas.

Q. At the time of the strike were you a member of the Union? A. Yes, sir.

Q. Were you ever on the picket line? A. No, sir.

Q. After the strike did you ever apply for work with the company? A. Yes, sir.

Q. To whom did you apply? A. Mr. Bateman.

Q. When? A. Oh, about two weeks after the strike.

Q. Where did you see Mr. Bateman? A. In his office.

Q. Was anyone else there? A. No, sir.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance to get to work.

*Leonard Guess—For National Labor Relations Board—
Direct.*

Q. What did he say? A. He said I would have to come back later; he would have to look it up and see.

Q. Did you go back later? A. Yes, sir.

Q. How much later? A. About four days.

Q. Did you see Mr. Bateman? A. Yes, sir.

Q. Where did you see him? A. In his office.

Q. Was anyone else there at that time? A. No, sir.

Q. What time of day was it? A. I would judge around 8:00 o'clock.

Q. In the morning? A. Yes, sir.

Q. What was said on that occasion? A. He said I didn't "incorporate with the company" when I was working; he couldn't do nothing for me.

Q. Did he say what he meant? A. No, sir.

Q. Do you know what he meant? A. No, sir; not for sure. I had a good idea.

Q. When did you first join the union? A. Well, I was one of the first ones. I don't remember just when that was—when they started.

Q. Did you ever hold office in the union? A. No, sir.

Q. Were you a union member when you left the employ of the company in January of 1935? A. Yes, sir.

Q. Were you a union member in September of 1935? A. Yes, sir.

Q. After the strike? A. Yes, sir.

Mr. Persinger: I offer as Board's Exhibit No. 52 the employment record of this witness.

Trial Examiner Kennedy: Any objection?

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It may be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 52.)

Mr. Persinger: Take the witness.

*Leonard Guess—For National Labor Relations Board—
Cross.*

Cross examination:

Q. (By Mr. Evans) Mr. Guess, you voluntarily left the employment of the company on January 14, 1935, I believe you stated? A. Yes, sir.

Q. You were not employed by the company at any time thereafter? A. No, sir.

Q. You did not apply for employment at any time until this occasion several weeks after August 24th, I believe you stated? A. No, sir.

Q. You left the employ of the company in order that you could purchase a restaurant in Douglas? A. Yes, sir.

Q. And go into the restaurant business, is that correct? A. Yes, sir.

Q. How long were you in the restaurant business in Douglas? A. About a month.

Q. What did you do, dispose of your restaurant? A. Went broke.

Q. Were you employed at any time, then, prior to June 10, 1935, other than the restaurant business? A. No, sir.

Q. Have you been employed at any time since that date? A. Yes, sir.

Q. When was the first time since that date that you have been employed? A. Well, it was in '36; but I couldn't say what month,—at the Denn.

Q. You went to work for the Denn in January, the latter part of January, 1936, did you not? A. I couldn't say for sure.

Q. It was in the early part of 1936, however? A. Yes, sir, I believe it was.

Q. That is the Shattuck Denn Mining Company? A. Yes, sir.

Q. What job did you have there? A. Mucker.

Q. Have you continued to work there as a mucker since that time? A. No, sir.

Q. Was your classification ever raised from mucker while you were working for Shattuck Denn? A. Yes, sir.

*Leonard Guess—For National Labor Relations Board—
Cross.*

Q. What wages did you draw when you first went to work for the Shattuck Denn? A. Four-forty, I believe.

Q. How long did you continue to draw that wage? A. About two months.

Q. Then what pay rate did you go on? A. Six dollars.

Q. In what classification? A. Shaft man.

Q. How long did you continue to work after that for the Shattuck Denn? That is, as shaft man? A. Oh, about a month.

Q. Then what happened? A. I quit.

Q. What month was it that you quit? A. Well, around August of 1936.

Q. Was it around August of 1936? A. Around August of 1936.

Q. So you worked about eight or nine months at the Shattuck Denn, did you not? A. No, sir; I didn't work that long.

Q. Are you sure? A. Yes, sir.

Q. How long would you estimate you did work there? A. I figured around four months. It could have been a little longer than that? A. I couldn't say for sure.

Q. Why did you leave the Shattuck Denn? A. I thought I had a better job.

Q. Did you have another job when you left there? A. Yes, sir.

Q. Where was that? A. Tularosa, New Mexico.

Q. So you went over to Tularosa, New Mexico? A. Yes, sir.

Q. For whom did you work there? A. George Orr Construction Company, at El Paso.

Q. How long did you work for the construction company? A. I would say about two months.

Q. What rate of pay did you receive? A. Forty cents an hour.

Q. How many hours a day? A. Forty hours a week, I believe.

*Leonard Guess—For National Labor Relations Board—
Cross.*

Q. Forty? A. Yes, sir. I think that is what it was.

Q. Then you left the employ of the construction company in about October some time of 1936? A. Yes, sir; somewhere along there, I guess.

Q. And then what did you do? A. Come here.

Q. Why did you leave the employ of the construction company? A. They finished the job.

Q. What did you do after you came back to Bisbee? A. Went to Patagonia, Arizona.

Q. What did you do at Patagonia? A. Worked at the Ventura Mining Company.

Q. The Ventura Mining Company? A. Yes.

Q. About what date did you go work for the Ventura Mining Company? A. I couldn't say; '36 some time.

Q. Was it before Christmas of '36? A. Yes, sir.

Q. How long did you work for them? A. Oh, about three months.

Q. What kind of a job? A. Timber man helper.

Q. What rate of pay did you receive there? A. Four and a half a day.

Q. And then did you leave the Ventura Company voluntarily? A. No, they shut down—run out of money.

Q. Then what did you do? A. Come back here.

Q. About what time of the year was it that they shut down? A. I couldn't say.

Q. It was after the first of the year, 1937, was it? A. Yes, sir.

Q. What did you do after you came back to Bisbee?

A. I went to work for the Shattuck leaser.

Q. Shattuck leaser? A. Yes, sir.

Q. About what month in 1937 was it that you went to work there? A. I couldn't say that.

*Leonard Guess—For National Labor Relations Board—
Cross.*

Q. It was early in 1937, was it? A. Yes, sir; pretty early.

Q. Was it almost immediately after you came back from the Ventura Mining Company? A. A little while.

Q. It was? A. Yes, sir; a little while after.

Q. What kind of a job did you have at the Shattuck lease? A. Mucking.

Q. What rate of pay? A. Four and a half, I believe.

Q. How long did you work at the Shattuck lease? A. Well, I worked off and on for about a month and a half, I guess. They would lay me off and hire me back for a while. I couldn't say exactly how much time.

Q. Then did you leave there voluntarily? A. No, sir.

Q. What did you do then? Did they lay you off? A. Yes, sir.

Q. Then what did you do? A. I went to work for the Boras Mining Company.

Q. About when was it that you went to work for the Boras Mining Company? A. Well, that was in '37.

Q. In the Spring? A. Yes, it was.

Q. Have you worked for the Boras Mining Company since that time? A. Off and on, yes, sir.

Q. What rate of pay did you receive when you went to work for them? A. Four and a half.

Q. Is that the highest rate of pay you received at any time while you were working for them? A. No, sir. I received \$5.

Q. When you went to work for them? A. Yes, sir.

Q. And what classification was that? A. Mucker.

Q. And did you ever work for them as a miner? A. Yes, sir; working now as a miner.

Q. Working as a miner. And what rate of pay are you receiving at the present time? A. Five and a half.

*Leonard Guess—For National Labor Relations Board—
Cross.*

Q. And you have been employed with them regularly, in so far as their employment is concerned, since some time about the Spring or Summer of 1937, is that correct? A. Yes, sir.

Mr. Evans: No further questions.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: If the Examiner please, I seem to have run out of witnesses.

Trial Examiner Kennedy: We will have this discussion off the record.

(Discussion outside the record.)

Trial Examiner Kennedy: Gentlemen, we will stand in recess until 9:00 o'clock tomorrow morning.

(Whereupon, at 4:35 o'clock p. m., an adjournment was taken until 9:00 o'clock a. m., Wednesday, February 2, 1938.)

Proceedings.

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

IN THE MATTER OF
PHELPS DODGE CORPORATION, a corpo-
ration,
and
INTERNATIONAL UNION OF MINE, MILL
AND SMELTER WORKERS, LOCAL No.
30.

Case
No. XXI-C-266

Room 2
Cochise County Court House
Bisbee, Arizona

WEDNESDAY, FEBRUARY 2, 1938

The above-entitled matter came on for hearing, pursuant
to adjournment, at 9:00 o'clock a. m.

Before:

THOMAS H. KENNEDY, Trial Examiner.

APPEARANCES:

DAVID PERSINGER, Attorney on behalf of the National
Labor Relations Board.

ELLINWOOD & ROSS, by DENISON KITCHEL and WILLIAM
A. EVANS, 807 Title & Trust Building, Phoenix,
Arizona, on behalf of Phelps Dodge Corporation,
Respondent.

PROCEEDINGS

Trial Examiner Kennedy: The hearing will be in
session.

Mr. Persinger: Mr. Wilcox, will you take the
stand, please.

**Joseph A. Wilcox—For National Labor Relations Board—
Direct.**

JOSEPH A. WILCOX, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: Joseph A. Wilcox.

Direct examination:

Q. (By Mr. Persinger) Mr. Wilcox, are you here in answer to a subpoena? **A.** I am.

Q. What is your business or occupation? **A.** Mining Engineer.

Q. Where are you employed at the present time? **A.** Shattuck Denn Mining Corporation.

Q. How long have you been employed by Shattuck Denn? **A.** A little over 11 years.

Q. Have you been a mining engineer that entire time? **A.** Part of the time I was helping the engineer.

Mr. Kitchel: I can't hear.

Trial Examiner Kennedy: You will have to speak up a little louder.

The Witness: Part of the time I was engineer's helper.

Q. (By Mr. Persinger) Are you familiar with the history of the Shattuck Denn Company, that is, when it was formed? **A.** Well, relatively; not exact dates, or anything of that kind.

Q. Well, approximately when was the company organized? **A.** I believe it was sometime about 1904, as the Denn-Arizona Copper Company and the Shattuck-Arizona Copper Company, two separate organizations. They merged, I believe it was, in 1925, as the Shattuck Denn Mining Corporation.

*Joseph A. Wilcox—For National Labor Relations Board—
Direct.*

Q. At the present time, how many different mines are being operated by Shattuck Denn? A. Well, the Denn mine is operated now, and they own the Shattuck mine up in the hills here, and they have an interest in another mine at Winkleman, but we have no operating connection with that.

Q. Has the mine been shut down for any period of time since 1925? A. Once.

Q. When was that? A. From 1932 until 1934.

Q. How long before the actual shutdown had production ceased? A. I would say approximately 10 months.

Q. Did production begin in 1934, when the mine was reopened? A. Yes. We prepared right away for production. I think actual production started about the first of 1935.

Q. Is there a certain minimum price for copper which is necessary in order to operate the Shattuck Denn Mines profitably? A. Well, evidently they will operate only at a profit, and I would say when copper gets so low they will be apt to close down the mine, or stop production at least.

Q. Could you estimate what that minimum price may be, from your experience in the past? A. Under present conditions, if copper went very much lower it might close down.

Q. Just what do you mean by "very much lower"? Would a cent be very much lower? A. Yes, a cent a pound on copper is a lot.

Q. In other words, you probably could not operate profitably at a price of 9 cents? A. Probably not.

Q. How many persons are employed at the present time at Shattuck Denn? A. Approximately 200.

Q. It has been testified here that the Shattuck Denn Mines follow exactly the wage rates of the Copper Queen. Is that correct? A. That is correct.

Q. What sort of a ventilating system do you have in the Shattuck Denn Mines? A. We have a forced draft ventilation, blowers.

*Joseph A. Wilcox—For National Labor Relations Board—
Cross.*

Q. And how long has that system been in operation?
A. Oh, about two months. Not quite two months, maybe.

Q. And prior to that time how were the Shattuck Denn Mines ventilated? A. We used air from the Phelps Dodge Corporation.

Q. And was that air ever hot and somewhat stale when it reached the Shattuck Denn Mines? A. Yes, that air was quite warm.

Q. What is the geographical location in relation, say, to the Junction of the Shattuck Denn Mines? A. The Denn is approximately 2500 feet in a northeasterly direction from the Junction shaft.

Q. And where is the Shattuck shaft? A. The Shattuck shaft is in the southwest part of the district; almost directly south of Bisbee, the City of Bisbee, on the Hill up here.

Q. And about how far from Bisbee? A. About half a mile, I would say, directly south of the City of Bisbee.

Mr. Persinger: I think that is all.

Trial Examiner Kennedy: Cross examine.

Cross examination:

Q. (By Mr. Kitchel) Mr. Wilcox, what is your present position with the Shattuck Denn? A. I am Chief Engineer.

Q. How long have you held that position? A. Since 1928.

Q. And who is in charge of the operations of the Shattuck Denn Mining Company? A. Mr. J. G. Flynn is General Manager.

Q. Do you, Mr. Wilcox, in your position as Chief Engineer, have anything to do with the determination of the policy of the company. A. I have none whatever.

Q. Do you have anything to do with the determination of the employment policy of the company? A. I have none whatever.

*Joseph A. Wilcox—For National Labor Relations Board—
Cross.*

Q. Do you have anything to do with the determination of the rate of production of the company? A. Well, possibly indirectly, only through argument.

Q. But the amount of copper to be produced in any one month is to be determined by Mr. Flynn and—— A. (Interrupting) And his associates.

Q. Associates? A. Yes.

Q. You stated, I believe, that the Shattuck Denn closed down from 1932 to 1934. Was that an unusual circumstance in the mining industry in Arizona during those years? A. That would be a rather personal answer.

Q. Well, maybe I should make my question a little clearer: You are familiar with some of the other mining centers in the state, for instance, the Globe-Miami district? A. Yes, sir.

Q. To your knowledge, were the large companies up there operating during that period? A. Not to any extent, to my knowledge.

Q. Isn't it true, Mr. Wilcox, that all of them were merely maintaining a skeleton force during that period? A. I would consider it as such.

Q. You have been asked concerning the ventilation at the Shattuck Denn Mining Company. Is it not true, Mr. Wilcox, that just recently the Shattuck Denn Mining Company has expended in the neighborhood of \$20,000 for the purpose of installing a new ventilation system? A. We have.

Mr. Persinger: Excuse me, Mr. Examiner. If I may interrupt counsel: I might say that I would be glad to stipulate that they have a very fine ventilation system now.

Mr. Kitchel: I would rather bring it out by questioning.

The Witness: I didn't hear all of that.

Trial Examiner Kennedy: It is not a question. You have already answered his question.

*Joseph A. Wilcox—For National Labor Relations Board—
Cross.*

Q. (By Mr. Kitchel) Are you familiar with the working conditions in the Phelps Dodge mine? A. I am not.

Q. Would you be able to state whether or not the Shattuck Denn working conditions are any worse or any better than the working conditions in the Phelps Dodge mine?

A. I would not.

Q. Has the Shattuck Denn been operating continuously since 1934? A. Yes, sir.

Q. At what time did you go on a 6-day week? A. I believe it was about the middle of last November. We stopped all Sunday operations.

Q. Prior to that time you were working on a 7-day basis? A. Every other Sunday we would work.

Q. In other words, it was an alternate 6- and 7-day week? A. Yes.

Q. When did that start? A. I don't believe I have any idea when the dates for that was.

Q. Was it in 1935, do you think? A. No. In 1935 we were working only 5 days a week; that is, part of 1935, at least.

Q. To your knowledge, was that also true of the Phelps Dodge? A. I couldn't say definitely what the Phelps Dodge were doing at that particular time.

Q. At the present time the Shattuck Denn is operating on a 6-day basis? A. Yes, sir.

Q. Is it not true, Mr. Wilcox, that recently a new ore body of relatively substantial proportions has been developed at Shattuck Denn? A. Yes, sir.

Q. Have you any reason to believe that at the present price of copper there should be any interruptions of the operations within the immediate future? A. Well, I have no personal knowledge of any reason of that kind; but, as I said before, I don't have anything to say about the policies of the company.

Q. Do the ores which are mined by the Shattuck Denn contain silver and gold values? A. Small amounts; yes, sir.

*Joseph A. Wilcox—For National Labor Relations Board—
Cross.*

Mr. Kitchel: I believe that is all, Examiner.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) Mr. Wilcox, would you know whether or not any particular employee of Shattuck Denn Company is in imminent danger of losing his job? A. I don't know of anybody that is.

Q. Would you know if there was such a situation? A. Very-likely I would.

Q. Are you familiar with the parties who have been named in the complaint, who have testified in this case? Do you know who they are? A. Is this the man that represents the local union in this case?

Q. I just wondered if you know the names of the men who testified in this case, or not? A. I wasn't at any of the hearings. I don't know just who all testified.

Q. You say you have about 200 employees at Shattuck Denn? A. Yes, sir.

Q. Do you know all of those who formerly worked for Phelps Dodge? A. Well, I know a great many of them.

Q. Do you know any of them who are in imminent danger of losing their position at Shattuck Denn? A. I don't know of any reason why they should.

Q. Do you know whether or not Shattuck Denn has any contracts or commitments that would require it to produce ore for the next six months? A. I am not familiar with that.

Trial Examiner Kennedy: You are not familiar with that.

Anything further?

Mr. Persinger: Nothing further.

Mr. Kitchel: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

Mr. Persinger: Thank you, Mr. Wilcox.

**Frank Peterson—For National Labor Relations Board—
Direct.**

I may state at this time, Mr. Examiner, for the record, that the General Manager of Shattuck Denn is, I understand, ill and out of the community, and I had hoped to have him here, but he is not obtainable.

Mr. Persinger: Call Frank Peterson.

FRANK PETERSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your full name, please?

The Witness: Frank Peterson.

Direct examination:

Q. (By Mr. Persinger) Mr. Peterson, were you formerly employed by the Phelps Dodge Corporation? A. I was.

Q. When were you first employed? A. January, '33.

Q. And how long did you continue to work at that time? A. Up until the day of the strike.

Q. And what job were you first employed at? A. Mucker.

Q. And what was your job just before the strike? A. Miner.

Q. At \$5 a day? A. Yes.

Q. Were you a member of the union at the time of the strike? A. I was.

Q. Did you go out on strike? A. I did.

Q. Were you on the picket line? A. Yes.

Q. Since the strike have you at any time applied for reinstatement? A. Yes.

Q. When? A. About a week after the strike, after the strike was called off.

*Frank Peterson—For National Labor Relations Board—
Direct.*

Q. To whom did you apply? A. Bateman.

Q. Who? A. Bateman.

Trial Examiner Kennedy: A little louder, please.

Q. (By Mr. Persinger) Where? A. At the employment office in front of the Junction.

Q. What time of the day? A. It was in the morning; I would say about 10:00 o'clock.

Q. Was anyone else present in Mr. Bateman's office?
A. No.

Q. What did you say to Mr. Bateman? A. I asked him if there was any chance of going back to work.

Q. What did Mr. Bateman say? A. He asked me first if I had been on the picket line, and I told him yes, and he said the company hadn't decided yet what they was going to do with us fellows.

Mr. Kitchel: I didn't hear the answer.

Trial Examiner Kennedy: Read the answer, please, Mr. Reporter.

(The answer referred to was read by the Reporter, as set forth above.)

Q. (By Mr. Persinger) Was anything further said at that time? A. No.

Q. Did you apply after that? A. Yes.

Q. When? A. Between 10 days and two weeks later.

Q. And where did you apply at that time? A. At the employment office.

Q. To whom did you make application? A. Bateman.

Q. What time of day was it? A. I would say around 10:00 o'clock in the morning.

Q. Was anyone in Mr. Bateman's office at that time?
A. No.

Q. What was said on that occasion? A. I asked him if there was any chance of going back to work, and he

**Frank Peterson—For National Labor Relations Board—
Cross.**

said, "No," he couldn't send me over there; they would either beat me up over there, or they would come over and beat him up.

Q. Anything further said? A. Nothing at all.

*Q. And have you applied since? A. No.

Mr. Persinger: I offer as Board's Exhibit 53 the employment record of the witness.

Mr. Kitchel: No objection.

Trial Examiner Kennedy: It will be received in evidence.

(Thereupon the document above referred to was received in evidence and marked as Board's Exhibit No. 53.)

Cross examination:

Q. (By Mr. Kitchel) Mr. Peterson, are you an employee of the Phelps Dodge Corporation at the present time? A. No.

Mr. Persinger: Mr. Examiner, I have been called to the telephone. May we recess for a moment?

Trial Examiner Kennedy: Yes, we will have a five-minute recess.

(At this point a short recess was taken, after which proceedings were resumed, as follows:)

Trial Examiner Kennedy: The hearing will be in session.

Mr. Persinger: If the Examiner please, I would like to withdraw the present witness and put on Mr. Malley.

Mr. Malley, will you take the stand, please.

(Witness temporarily excused.)

Trial Examiner Kennedy: There is no objection to that, is there?

Mr. Kitchel: No objection, Mr. Examiner.

*James Malley—For National Labor Relations Board—
Direct.*

JAMES MALLEY, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Kennedy: What is your name, please?

The Witness: James Malley.

Direct examination:

Q. (By Mr. Persinger) Mr. Malley, what is your business or occupation? A. Deputy State Mining Inspector.

Q. Are you inspector for this district? A. Yes, sir.

Q. Can you tell us how many mines there are within a radius of about 30 miles of Bisbee that are operating at the present time? A. That is, with a large number of employees?

Q. No, just mines that are being operated. A. Well, in the district that I work in there are probably 14 producing mines.

Q. How large is that district? A. Sir?

Q. How large is your district? A. Well, that is Cochise County and part of Pinal and Pima and Santa Cruz.

Q. And they have about 14 mines operating? A. Yes, sir.

Q. Can you tell me if, during the past three years—that is, since the beginning of 1935,—there have been any other mines operating which are now shut down? A. Well, there are, on a small scale.

Q. What would you regard as a small scale? A. Well, working from 3 to 6 or 8 men.

Q. I see. Of the 14 mines which are operating at the present time, about how many would employ as many as 150 men or more? A. Out of the 14?

Q. Yes. A. Well, I would say all of the 14 employs more than that many men.

*James Malley—For National Labor Relations Board—
Direct.*

Q. And can you tell me approximately how many of those 14 mines would be located within about three miles of Bisbee? A. Well, it would be about 6 in this county that would take in a radius of about a hundred miles. This county is about a hundred miles square.

Q. And about 6 in the county? A. Yes.

Mr. Persinger: I think that is all.

Mr. Kitchel: No questions.

Examination by the Trial Examiner:

Q. (By Trial Examiner Kennedy) What are your duties as Deputy State Mine Inspector? A. Inspecting the mines in the vicinity and seeing that the laws are lived up to, especially the 8-hour law, and the safety and so forth.

Q. You are particularly concerned with safety conditions, is that right? A. Yes.

Q. And in the course of your duties do you inspect the Copper Queen mine of the Phelps Dodge Company? A. Yes, sir.

Q. How long have you been doing that? A. Since 1923.

Q. Do you also inspect the Shattuck Denn mine? A. Yes, sir.

Q. How long have you been doing that? A. How long?

Q. Yes. A. Since 1923.

Q. Can you give us a comparison of the safety conditions in the two mines? A. Well, up until about three months ago the Phelps Dodge was far superior to conditions in the Shattuck Denn, due to the fact that the Shattuck Denn has only one shaft and the ventilation had been very poor. We had been urging them at times to insist on better ventilation down there. We have taken the matter up with the Company quite a few times, even with some of the directors, regarding ventilation. They have been working underground down there from 200 to 230 men, and the

*James Malley—For National Labor Relations Board—
Direct.*

only ventilation they were getting was a little surplus of fresh air from the PD, and much of that air had been circulated through the PD mines before it got to the Shattuck Denn, and when they would go down in those mines we would find that the air wasn't so good. I know some of the places that we asked them regarding one shift, working one shift in them, and the management more or less complied with those requests.

And about two months ago, why, they put in a ventilation system down there that is pulling their own fresh air down their own shaft; that is, down two compartments, and the other two compartments—there are two outlets, which has taken care of the mine regarding ventilation just as good as the PD, that is, it will be within the next month.

Of course, you understand, when a mine is being opened up it takes time to put in doors, auxiliary doors, to get fresh air into some of the outlying places in the mine. At the present time, I would say the ventilation conditions at the Denn are just as good as the PD, and working conditions are just as good.

Q. Working conditions also? A. Sir?

Q. All of the safety conditions, all safety factors are as favorable at the Denn as they are at the PD at the present time? A. Yes.

Q. And how deep is the Denn mine? A. The Shattuck Denn is 2700 feet, but the lowest working place is 2560 feet.

Q. 2560 feet? A. Yes, sir. There is about 200 feet of shaft that they have not explored as yet.

Q. And there is still just one shaft that they work? A. Yes. Of course, the law provides for another exit, but they can go right out through the PD. They have done that on one or two occasions.

Q. They can do that? A. They can do that, yes.

Q. How many connections are there between the Denn and the PD? A. Well, there are at least three.

*James Malley—For National Labor Relations Board—
Direct.*

Q. Have you the record of accidents in the two different properties? A. Yes, sir.

Q. Do you have in mind what the record of accidents has been in the last 12 months in the two different properties?

A. Well, I don't believe there would be much difference.

Q. You don't think there would be much difference? A. No. Of course, we could check them up and find out, but from a general viewpoint there is very little difference; that is, taking the number of men employed, and so forth.

Q. Have you ever worked as a miner? A. I certainly did.

Q. How many years? A. Well, I went to work in the coal mines when I was 12 years old and have been working in them more or less ever since.

Q. As a miner, though, and as an employee, how many years did you work? A. How many what?

Q. As an employee of a mine, how many years did you work? A. Well, I would say 30 years or more.

Q. Basing your answer on that experience, which mine would you rather work in, the P. D. or the Shattuck Denn? A. Well, I wouldn't have much preference. I think the P. D. is a little more active in safety campaigns and putting stuff like that over than the Shattuck Denn.

Q. In the course of your duties as an inspector, do you observe the different operations that the men go through in these two different mines? A. Yes, sir.

Q. Is there any difference in the type of work that a mucker has to do in the P. D. Mine than in the Shattuck Denn Mine? A. Well, there isn't much difference. Both mines are pretty near a hundred per cent mechanical mucking.

Q. How about the operations of a man who is classified as a miner? Are they any different in the two mines? A. I don't think there is much difference.

*Frank Peterson—For National Labor Relations Board—
Recalled—Cross.*

Trial Examiner Kennedy: Any further questions?

Mr. Persinger: I have nothing further.

Mr. Kitchel: Nothing further.

Mr. Persinger: Thank you, Mr. Malley.

Trial Examiner Kennedy: You are excused.
(Witness excused.)

Mr. Persinger: Mr. Peterson, will you resume the stand?

FRANK PETERSON, a witness recalled by and on behalf of the National Labor Relations Board, having been previously duly sworn, resumed the stand and further testified as follows:

Trial Examiner Kennedy: Cross examination.

Cross examination:

Q. (By Mr. Kitchel) Mr. Peterson, have you been an employee of the Phelps Dodge Corporation at any time since June 10, 1935? A. No.

Q. What shaft were you working at the time that you walked out on June 10, 1935? A. Campbell.

Q. Were you in the picket line every day? A. No.

Q. Approximately how many days were you in the picket line during the period that the picket line was established? A. I would say I was in the line better than half the time during the whole strike.

Q. Were you in the picket line right up to the last week during the time within which the picket line was in action? A. Within two weeks, I would say.

Q. You were not there the last two weeks? A. No, I wasn't.

Q. Did you leave the district at that time? A. No. I was in the district. I was out at the mountains—the Huachuca Mountains.

**Frank Peterson—For National Labor Relations Board—
Recalled—Cross.**

Q. Is that your home? A. That is where I am living now, yes.

Q. Were you working out there? A. No.

Q. Were you on relief at any time during the course of the time that the picket line was in action? A. Yes, sir.

Q. How long did you continue on relief? A. Up until—from the strike until October of '35.

Q. October of 1935? A. Yes, sir.

Q. And then did you obtain employment? A. Construction, yes, for Pleasant & Hasler.

Q. For Pleasant & Hasler Construction Company? A. Yes, sir.

Q. On the Fort Huachuca Road? A. Yes, sir.

Q. How long did you work for them, Mr. Peterson? A. Until the latter part of March, '35—'36.

Q. From October, '35, until the latter part of March, 1936? A. Yes.

Q. What was your rate of pay when working for that company? A. Fifty cents an hour; eight hours a day.

Q. Eight hours a day? A. Yes.

Q. Did you have continuous employment with them during that period? A. No, I don't recall; but we didn't get full time. They never let us make full time.

Q. What was full time? A. That would be six days a week.

Q. Eight hours a day? A. Yes.

Q. Well, how much would you say that you averaged a week during that period of time? A. About \$16, I imagine.

Q. \$16 a week? A. Yes, as well as I remember.

Q. Were you working less than 40 hours a week? A. When we worked we worked the 40 hours, and then we had to lay off—lose time.

Q. In March of 1936 were you laid off that job? A. Yes.

*Frank Peterson—For National Labor Relations Board—
Recalled—Cross.*

Q. What was your next employment after that, Mr. Peterson? A. For John Steffes, contractor, Rancho Sacatal.

Q. Where is that? A. Between here and Douglas.

Q. What job was that contractor on? A. Well, building. He was building that ranch out there.

Q. What kind of a job did you have with him? A. Laborer.

Q. Did you get that job right after you quit the Pleasant & Hasler job? A. No. It was the latter part of April or the first of May when I went to work there.

Q. How long were you on that job? A. Until the middle of July.

Q. From the latter part of April, 1936? A. Yes, sir.

Q. To the middle of July, 1936? A. Yes, sir.

Q. What was your rate of pay on that job? A. \$4 a day.

Q. \$4 a day? A. Yes, sir.

Q. How many days a week? A. Six days a week.

Q. And then was that job finished in July of 1936? A. July, yes.

Q. What was your next employment, Mr. Peterson?

A. At the Border Ranch at Hereford.

Q. When did you go to work there? A. September, '36.

Q. What kind of a job did you get there? A. Laborer.

Q. How long did you work for the ranch? A. Steady until March.

Q. March of 1937? A. 1937, yes.

Q. How did you happen to quit that job? A. The work finished up.

Q. What was your rate of pay with the Border Ranch, Mr. Peterson? A. Fifty cents an hour.

Q. Eight hours a day? A. Eight hours a day, yes.

Q. \$4 a day? A. Yes.

Q. How many days a week? A. Six days a week.

*Frank Peterson—For National Labor Relations Board—
Recalled—Cross.*

Q. Did you, in addition, receive your board and lodging? A. No.

Q. Where did you live during the course of time you were working for them? A. I lived above the Border Ranch, Galeski's Place.

Q. So there was nothing in addition to the \$4 a day paid to you by the Border Ranch? A. Not a thing.

Q. Then in March of 1937, when you quit the Border Ranch, what was your next employment? A. Well, I stayed around there and worked off and on for the Border Ranch, whenever they happened to need me.

Q. Over what period of time? A. Until August.

Q. And then did you obtain another job? A. I worked one month on the W. P. A. at Fort Huachuca.

Q. That is, the month of August? A. Yes, sir; August. It was in August when I started, and I finished up in September.

Q. Then what did you do? A. I went to work for John Steffes, in Lowell.

Q. What job did you have with Mr. Steffes? A. Laborer.

Q. At what rate of pay? A. \$4.50 a day, 8 hours.

Q. \$4.50 a day. And how many days a week? A. 6.

Q. How long did you continue at that job? A. Let's see. When did I finish that? About the last of November, when we finished that.

Q. And why did you leave that job? A. Laid off, work finished.

Q. Have you been employed since that time? A. The 20th of December I went to work for the Lanteen Medical Association.

Q. The 20th of December? A. Yes, sir.

Q. What is your job with that Association? A. Laborer.

Q. Whereabouts do you work? A. Fort Huachuca, Huachuca Mountains.

*Frank Peterson—For National Labor Relations Board—
Recalled—Cross.*

Q. How much do you get paid— Are you working with them at the present time? A. Yes; \$4.00 a day.

Q. \$4 a day? A. Yes.

Q. How many days a week? A. Six. That isn't steady. It is off and on. We lose quite a lot of time.

Q. Well, will you average—or, have you, since December 20th, averaged five days a week? A. I would say four days a week since December 20th.

Q. What is the nature of the work they are doing out there in the Huachucas? A. Building, construction.

Q. And that is your present employment, Mr. Peterson? A. Yes.

Q. Have you at any time during this period that we have been discussing, from June 10, 1935, to date, made application for employment at the Shattuck Denn Mining Company? A. Yes, I rustled there twice.

Q. When was that? A. Along through the summer; I would say about along in May.

Q. In 1937? A. Of 1937, and then later.

Q. Were they hiring at that time? A. Very few men.

Q. Were you ever hired and rejected by them? A. No.

Q. By the physician? A. No.

Q. Did you make any application for employment with the Shattuck Denn in 1936? A. No.

Q. Then, it was just the two times in May of 1937—
A. (Interrupting) May, and again in August.

Q. August of 1937? A. 1937, yes.

Q. Have you ever, since approximately the middle of September, 1935, made application for employment with the Phelps Dodge Corporation? A. No.

Mr. Kitchel: I believe that is all.

Trial Examiner Kennedy: Anything further?

Mr. Persinger: Nothing further.

Trial Examiner Kennedy: You are excused.

(Witness excused.)

BALANCE OF RECORD

WILL BE FOUND IN VOL. II

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